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CONTENTS

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MASSACHUSETTS BAR ASSOCIATION, 60 State St., Boston, Mass.

INTRODUCTORY STATEMENT.

The complete list of Officers and Committees has generally been printed with the report of the Annual Meeting. As no list of members of the Association has been printed recently, another special number is to be issued very soon containing the list of members and by-laws and the list of Officers and Committees will appear there, so that all such information will be collected in one pamphlet.

As to Advertising by Banks and Trust Companies.

Particular attention is called to the report of the Special Committee on Advertising by Banks and Trust Companies which was referred to the Executive Committee for consideration. The Executive Committee last year was requested to express an opinion on this subject by the Committee on Legal Affairs of the Legislature. The opinion then expressed was printed in the Quarterly for February, 1925, pp. 35-39. Expressions of opinion or suggestions from any members of the Association for the assistance of the Executive Committee will be welcomed.

F. W. Grinnell, *Secretary.*

Entered as Second-Class Matter at the Post Office at Boston.

SIXTEENTH ANNUAL MEETING

The Sixteenth Annual Meeting of the Massachusetts Bar Association was held at the building of the Boston Chamber of Commerce, Wednesday, December 9, 1925, at four o'clock p. m. About sixty members were present from different parts of the State. Other members came in during the meeting. President George L. Mayberry presided.

THE PRESIDENT.—The meeting will please come to order. The records of the previous meeting were published in the LAW QUARTERLY for February, 1925. It would seem hardly necessary to read them. Will some one move that the reading be dispensed with?

MR. A. A. GLEASON.—I so move.

The motion was seconded and carried; and on motion of Mr. Moorfield Storey, the minutes were approved without reading.

REPORT OF THE EXECUTIVE COMMITTEE.

The action of the Executive Committee in regard to the subject of advertising by banks and trust companies, on which an opinion was requested by the legislative Committee on Legal Affairs, was printed in the QUARTERLY for February, 1925, page 35, following the report of the Special Committee appointed in accordance with the vote at the last annual meeting. The whole subject was referred to the next annual session by the legislature.

The following new members were admitted by the Executive Committee during the year.

LIST OF NEW MEMBERS ADMITTED SINCE NOVEMBER 20, 1924.

RICHARD S. BELLOWS, 1016 Third National Bank Bldg., Springfield, Mass.

EARLE BROWN, 390 Main St., Worcester, Mass.

EDWIN J. COUGHLIN, 14 Central Ave., Lynn, Mass.

WILLIAM C. CROSSLEY, 8 South Main St., Fall River, Mass.

EDITH P. CUMMIN (MISS), 1 Federal St., Boston, Mass.

FRANK S. DELAND, 11 Pemberton Sq., Boston, Mass.

JOSEPH F. DOYLE, 23 Central Ave., Lynn, Mass.

LINWOOD M. ERSKINE, 390 Main St., Worcester, Mass.

WILLIAM E. FULLER, 115 Granite Block, Fall River, Mass.

ARTHUR V. GETCHELL, 74 India St., Boston, Mass.

FRANK C. GORMAN, 73 Tremont St., Boston, Mass.

EDWARD F. HANIFY, Justice Second District Court of Bristol, Court House, Fall River, Mass.

RICHARD K. HAWES, 57 North Main St., Fall River, Mass.

THOMAS F. HIGGINS, 31 South Main St., Fall River, Mass.

JOSEPH W. KEITH, 106 Main St., Brockton, Mass.

NEIL LEONARD, 1 Federal St., Boston, Mass.

HARRY D. LINSCOTT, 145 Munroe St., Lynn, Mass.

JAMES H. LOWELL, 54 Devonshire St., Boston, Mass.

NATHAN MATTHEWS, 1133 Tremont St., Boston, Mass.

CHARLES A. MCCARRON, 85 Devonshire St., Boston, Mass.

ALBERT E. MCGRATH, 34 Masonic Bldg., New Bedford, Mass.

JOHN H. MITCHELL, 500 Main St., Springfield, Mass.

JOHN T. NOONAN, 1 Federal St., Boston, Mass.

JOHN H. O'NEIL, Market Square, Amesbury, Mass.

DANIEL F. O'ROURKE, 73 Washington St., Salem, Mass.

HERMAN RITTER, Chicopee, Mass.

I. MANUEL RUBIN, 231 Main St., Brockton, Mass.

ROBERT H. O. SCHULZ, 73 Tremont St., Boston, Mass.

HAROLD SEIDENBERG, 24 Milk St., Boston, Mass.

HENRY W. SHAY, 31 South Main St., Fall River, Mass.

GEORGE L. SISSON, Room 115, Granite Block, Fall River, Mass.

JOHN V. SPALDING, 52 Chauncey St., Boston, Mass.

NORMAN S. TRIPPE, District Court, Natick, Mass.

WILLIAM W. YERRALL, 1016 Third National Bank Bldg., Springfield, Mass.

The committee lost a most valuable member during the year by the death of William R. Sears, of Boston, who had always shown marked interest in the work of the Association. His last service to the Association was rendered from a sick bed, shortly before his death, by his letter of February 21, 1925, to the Executive Committee on the subject of "Advertising by Banks and Trust Companies", which was printed as a supplement to the report of the Executive Committee already referred to in the QUARTERLY for February, 1925, pages 36-38.

Respectfully submitted for the committee.

F. W. GRINNELL,

Secretary.

On motion of Mr. Burt the report was accepted and placed on file.

ABSTRACT OF REPORT OF JOHN W. MASON, TREASURER.

RECEIPTS.

From Charles B. Rugg, former Treasurer, Deposit in Mechanics Savings Bank, Worcester	$2,388.81
Cash	554.98
From dues for 1924	70.00
From dues for 1925	4,320.00
From dues for 1926	5.00
From dividends Mechanics Savings Bank	104.84
Total receipts	$7,443.63

PAYMENTS.

Total payments for expenses connected with annual meeting, preparation and publication of MASSACHUSETTS LAW QUARTERLY, Secretary's Stenographer, copies of Canons of Ethics for distribution by Bar Examiners to applicants for admission, postage, stationery and other miscellaneous items	$3,662.32
Balance on hand Mechanics Savings Bank, Worcester	2,493.65
Balance on hand Hampshire County Trust Co.	1,287.66
	$7,443.63

The report was approved.

THE PRESIDENT.—The next matter is the report of delegates to the Conference of Bar Associations (Messrs. Stoughton Bell, Frederick W. Mansfield and Reginald H. Smith) and Mr. Bell will report for that delegation.

MR. BELL.—Mr. President, I have a report which is written in a personal vein but has been looked over by Mr. Mansfield and I understand by Mr. Smith, the other delegates, and is in substance approved as a report of the delegates.

REPORT OF DELEGATES TO CONFERENCE OF BAR ASSOCIATIONS IN DETROIT IN SEPTEMBER, 1925.

I appreciate most deeply the honor conferred upon me by the President of the Association in appointing me a delegate to the conference of Bar Association delegates held last week in Detroit. This conference has, I believe, greater opportunities for accomplishing definite and constructive results than have the meetings of the American Bar Association. That this is so is evidenced by the acceptance by the Hon. Charles E. Hughes of the office of the Presidency of the conference after the completion of a most successful year as President of the American Bar Association.

Some personal impressions of the conference just closed may be of interest. In the first place the conference, unlike the meetings of the Bar Association, is a strictly deliberative body. The subject matter of reports previously presented in print is thoroughly discussed before the conference takes action thereon. Although organized only nine years ago, it has to its credit several very important constructive reforms.

Among the important matters considered this year, perhaps the most far reaching, is the question of how the American Bar Association can more completely co-ordinate its activities with those of of the state and local Associations. This discussion grew out of the report submitted by Judge Goodwin of Chicago as chairman of the Committee on State Bar Organization to the effect that

> "Proper standards of professional conduct cannot be adequately created and maintained without bringing into the, bar organization all those entitled to practice law."

To this end Alabama, North Dakota, Idaho and New Mexico, in the order named, have adopted legislation providing that all who practice law must first be qualified as a member of the State Bar Association and must have paid his dues thereto. In other states the matter of the passage of similiar statutes is being more or less vigorously pushed forward. The conference voted to urge the State Associations, in those states where it can be done constitutionally, to introduce and urge the passage of similiar statutes. If this be accomplished, it would mean a membership in the American Bar Association of more than 125,000 lawyers instead of 24,000 as at present. This will necessarily mean changes in its organization as well as in its methods of doing business. With or without this increase the conference felt very strongly that the American Association ought to be in closer touch with the state and local Associations either through direct representation on the Board of Directors or through a vote on matters of policy of the American Association. The whole subject of organization and co-ordination was referred to a Special Committee for study and report. That this report will be the subject of very considerable discussion is certain for it will not only affect the organization of the National Association and its co-ordination with the state and local Associations, but it will look toward the ultimate control of conditions for admisson to practice as well as the conduct of the lawyer after admission.

In connection with this subject, it may be well to refer to some of the reports from the various state Bar Associations. There is one activity which has only recently been re-introduced into some few of our states and which to be is most valuable. I say "re-introduced" because I am told that in the old days when conditions of living were less complicated than they are today, it was a practice quite common, particularly in the west. I refer to what was then a neighborly affair, now a dinner given on the day of admission to all persons admitted to practice law. I cannot urge too strongly upon the officers and members of the Massachusetts State Bar Association the immediate inauguration of a dinner given by the Association to the newly admitted "ministers of justice".

Recently our Supreme Court has treated the act of admission with more consideration than was the practice when I was admitted. If the Bar will carry on and point out at such a gathering through well known members the importance of the step, as well as the advantages to be gained by the young attorney from membership in the local and other Bar Associations, it is my belief that a higher standard of practice and a much greater interest in the general welfare of the Bar will result.

Other reports and discussions dealt with "Co-operation with the Press" looking toward more accurate reporting of court proceedings and the elimination of inspired interviews and reports. Suggestion was made that the state and local Bar Associations appoint committees on the relationship between the press and the Bar and create bureaus of accurate information for the press.

The committee on Judicial Selection recommended a practice already in existence in Massachusetts for the assistance of the electorate, in our state the appointing power, in the selection of fit candidates for the judiciary.

There were also reports from the committees on Legal Education and on Conciliation and Small Claim Procedure, the latter submitted by its chairman, one of the delegates of this Association, Reginald Heber Smith, of Boston. In this report Mr. Smith pointed out the magnificent work being done by legal aid bureaus throughout the country as well as in many foreign countries.

William Draper Lewis of Philadelphia, director of the American Law Institute, made a most able presentation of the work of the Institute in restating the common law, a work, the importance of which is so great that no member of the American Bar can afford to let it go on without his active participation. Different subjects

such as contracts, criminal law and conflictions of law are referred to the greatest scholar in his particular subject and it is his duty to compile the re-statement of the subject. This is then discussed phrase by phrase, sentence by sentence, and paragraph by paragraph by the members of the Institute. It is then amended or re-written if necessary and again discussed. After it is agreed upon, it is then ready for submission to the members of the Bar and here it is that we can be of assistance. The New York State Bar Association has ordered printed copies of these statements for distribution among its members that they may be in touch with the developments and may, by their individual suggestion and criticism, make the work when completed more perfect.

While the Institute has a fund of $5,000,000 from the Carnegie Foundation to carry on its work, it has no funds that can be used for distribution of the statements. I would suggest that the officers of the Massachusetts State Bar Association consider seriously taking action similar to that of New York and that they urge all Massachusetts attorneys to take one or more of these statements and study them thoroughly with the idea of assisting the Institute to make perfect this enormously important work.

I cannot close without a single reference to the great speech of our President, Charles Evans Hughes, on "Liberty and Law". It was the general opinion of 1,400 members who attended the meetings of the American Bar Association that this was the finest thing of its kind yet produced. It was and is epoch making and should be read not only by members of the Bar but by every citizen of this great land. It overshadowed all the other great speeches to which we were privileged to listen, and this is said without detracting in the least from such great addresses as were delivered by Lord Buckminster, late Lord Chancellor of England, Monsieur Foucharde, Batonnier of the Paris Bar, the Secretary of State, and the Attorney General of the United States, to mention only a few.

MR. BAILEY.—I move the report be accepted and referred to the Executive Committee to consider the suggestions.

[Motion seconded and carried.]

REPORT OF THE GRIEVANCE COMMITTEE.

The committee has held four meetings during the year, at each of which a majority of the members were in attendance. These meetings were held January 17, January 24, June 27 and December 6, respectively.

A number of complaints received have been disposed of by the Secretary either as plainly unfounded, or as being within the jurisdiction of the active Grievance Committees of the Bar Association of the City of Boston and the County of Middlesex, respectively.

Complaints against several attorneys necessitated full and lengthy hearings of the parties before the full committee.

Other serious matters have been delayed in disposal for lack of sufficient evidence which it appeared probable could be secured on proper investigation, and these have been referred either to members of the committee or to local members of the Bar who are actively prosecuting such inquiries.

The committee desires at this time to express its sincere thanks to many members of the Bar in different localities who have given it willing, faithful and efficient assistance in such investigations and whose careful and thorough reports have been of great value. We are glad to say that most of the complaints made to us have been unfounded and have been dismissed. In some other cases, complainants have failed to show such conduct upon the part of attorneys complained of as warranted the recommendation of so severe a penalty as disbarment. Some of these matters have been dismissed, with or without a word of caution; others have been placed upon file in view of possible future charges against the respondents.

Eight matters were brought to the attention of the Secretary too late for proper investigations to be made before the last meeting of the committee.

In one case where the committee were ready to recommend disbarment, the investigations of the Secretary brought out the fact that the attorney had been already disbarred in Hampden Court December 17, 1924.

The Commissioner of Prisons has asked the aid of this committee in reaching what he believes to be a real evil, namely, the practice which he has found on the part of certain attorneys of charging enormous fees to ignorant clients accused of crime. One such matter brought to the attention of the committee by the Commissioner in which it appeared on the face of it that exorbitant fees were so charged, was investigated fully; but it appeared that, while the fees were undoubtedly high, they were not unreasonable in view of the services performed. In this particular case one attorney had received payment from the County for representing a defendant, while his associate received considerable sums from the defendant and his family.

We are of the opinion that there are many such cases, however, where just and well founded complaints of unethical conduct to such an extent as to warrant disbarment can be made and sustained, and we would welcome the aid of the members of this Association in bringing to the attention of the committee all such facts as may warrant action on our part and thereby assist the Commissioner in his laudable efforts to protect the interests of the families of the prisoners under his charge.

Of thirty-four (34) complaints brought to the attention of the full committee, fourteen (14) are still pending, including the eight of recent date above referred to.

As Chairman, I wish to express to all the members of the committee, including the efficient Secretary, Marcus Morton, Jr., my sincere appreciation of the valuable time and thought given by them to this distinctly public service.

Respectfully submitted,

FRANK M. FORBUSH,
Chairman.

The report was placed on file.

REPORT OF THE COMMITTEE ON LEGISLATION.

The views of this committee and of the Executive Committee relative to the proposed commercial arbitration law were explained in the report of last year as printed in the QUARTERLY for August, 1924, and reported to the Legislative Committee considering the matter. The new commercial arbitration act of 1925, St. 1925, ch. 294, was printed with an introductory statement as to its history in the QUARTERLY for May, 1925, pages 21-25.

The subject of advertising by banks and trust companies was referred at the last meeting to a Special Committee on that subject so that its consideration by the Committee on Legislation was unnecessary. The whole subject of judicial procedure, etc., was under consideration of the Judicial Council during the year.

At a meeting of the committee held this afternoon prior to the annual meeting of the Association, the recommendations in Appendix C of the first Report of the Judicial Council were considered and it was voted to recommend that the Association take active steps to enlist the co-operation of its members and also of the County Bar Associations in the promotion of the adoption at the ensuing

session of the legislature of all the measures recommended by the Judicial Council.

EDWIN G. NORMAN.
Chairman.

The report was ordered placed on file.

THE PRESIDENT.—I suggest that the consideration of the recommendations in this report await the last heading of the topics of the meeting, when it would naturally come up.

REPORT OF SPECIAL COMMITTEE ON ADVERTISING BY BANKS AND TRUST COMPANIES.

At the annual meeting of the Massachusetts Bar Association held on Thursday, November 20th, 1924, there was a discussion of the subject of advertising by banks and trust companies, and it was voted that a committee of five appointed by the President to confer with the representatives of the Corporate Fiduciaries Association to consider the subject of advertising and practice of law by such corporations and whether any legislation was advisable. The undersigned were appointed members of this committee. The committee held a number of meetings, both by itself and in conference with the Committee on Amendment of the Law of the Boston Bar Association, and with a Conference Committee appointed by the Corporate Fiduciaries Association.

Two bills bearing on the subject matter which the committee was appointed to consider were introduced in the 1925 Session of the Massachusetts Legislature. These bills were identical and provided in substance that no corporation authorized to act as executor, administrator or trustee in this Commonwealth should solicit employment in any of said capacities, either by advertisements of such a character or by such other means as would, if employed for a like purpose by a member of the Bar, be a violation of the standards of professional conduct, recognized and enforced by the courts of this Commonwealth. These bills came before the Committee on Legal Affairs, and their enactment was advocated by some individual members of the Bar and opposed by representatives of the Corporate Fiduciaries Association. Members of this committee were present at the hearings, but did not feel authorized to take any definite position on the bills. Before the hearings were concluded this committee recommended to the Executive Committee that the Massachusetts Bar Association support the bills which had been

filed in their original form, with the change that the words "an association of lawyers" be substituted for "a member of the bar". The Executive Committee of the Association, however, recommended that the Association support a bill prohibiting any advertising by corporate fiduciaries other than a mere statement that they were authorized to act as such. Inasmuch as the petitions on which the two bills above referred to were based were not broad enough to cover the bill advocated by the Association, the whole matter was referred, at the request of the Committee on Legal Affairs, to the next annual session of the Legislature, and the same question will therefore arise in the ensuing year.

Your committee has given very careful consideration to the merits of the proposition that advertising by trust companies should be regulated by law, and also if they should be so regulated to the question of the form of legislation that is most desirable. On the main question your committee finds the following situation to have arisen:

In Massachusetts for very many years, trust estates have been largely handled by members of the legal profession, and in Boston in particular many lawyers and firms have specialized in this branch of professional work and are well qualified and well equipped to handle it. In the smaller cities and towns the handling of estates of deceased persons and trusts is usually in the hands of general practitioners, who are commonly men of such character and experience that the work is performed skillfully and well. The work of handling trust estates, however, owing to the increasing complexity of tax laws and business conditions generally, has tended to become more and more specialized. Members of the bar who have the requisite special experience are, of course, restricted by the ethics of the profession from advertising in any way for business of this character, and must content themselves with such employment as comes to them naturally from their reputation for honesty and fidelity to their trusts.

In more recent years many national banks and trust companies have undertaken as a branch of their business to serve as executors, administrators, trustees, guardians and in other fiduciary capacities, and have advertised their trust departments in the newspapers, in circulars, in letters and by personal solicitation. They are not restrained as lawyers are from advertising, and they naturally call attention to the advantages of the appointment of a corporate trustee without mentioning any of the corresponding disadvantages.

Until recently many of the advertisements were extremely objectionable by reason of containing assertions by inference, if not by direct statement, that individual trustees, whether lawyers or otherwise, were undesirable and unsafe, because likely to embezzle the trust funds or to lose them by unwise investments. This form of advertising has been discontinued through the efforts of the Corporate Fiduciaries Association, but the trust companies and banks continue to make assertions which, if left without explanation or qualification, are almost equally misleading.

The advertisements almost always lay stress upon the advantages of the corporate form of doing business as contrasted with the individual. The perpetual life of the corporation is always one of the principal factors. It is unnecessary more than to refer to the trust companies which in recent years were closed by the Bank Commissioner because of dishonest and incapable management. None of these trust companies were authorized to act as fiduciaries, but some or all of them had savings departments the maintenance of which is service of a fiduciary nature, and the savings depositors found little protection or advantage from the fact that they had entrusted their funds to an incorporated trust company. It is not believed that any of the existing banks or trust companies are comparable to those closed by the Bank Commissioner, but the history of those cases demonstrates that the fact that a bank or trust company is incorporated under the laws of this Commonwealth does not in and of itself constitute adequate protection to those who wish to put their funds in its care. Even, however, among the banks and trust companies of unquestioned standing there is a constant change going on by reason of mergers and other like causes, and one who entrusts his funds by will or trust instrument to a particular trust company, either because of its attractive advertising or for some sounder reason, may find it has become almost overnight a part of a larger banking institution which he may particularly detest or distrust. So also the officers of a trust company upon whom he may especially rely are as likely to die as individual trustees, and there is the additional possibility of a change in the ownership of the stock which may result in a change in the personnel of the officers.

The advantage of the large capital stock of the banks and the greater security in case of misappropriation of the trust funds is another advantage much emphasized in the advertisements, but it is of little importance since an individual trustee may well have as surety on his bond a surety company with much greater assets than those of any local bank or trust company.

The trust companies in their advertisements almost always lay stress upon the skill and experience of their trust departments and not infrequently emphasize the standing in the business and financial world of some of the best known men upon their boards of directors who are serving on the trust committees, implying that the smallest trust receives personal care and attention from business men and financiers whose names are household words. Except, however, as to matters of general policy it is doubtful if the men whose names are thus held out have anything to do with the management of the individual trusts, and these are usually left as a routine matter for employees on relatively small salaries and of limited business experience. It is probably true that an individual trustee of experience is as well qualified to handle trust funds as many of the employees of trust companies upon whom the actual responsibility devolves, and that in all cases in which initiative and judgment in the handling of the trust property is required much better results can be obtained from individual trustees, but the advertisements of the trust companies never even suggest that such a condition may exist, and those who read them are led to infer that in every case and under all circumstances the trust company is superior to the individual fiduciary.

The effect of the advertising is thus detrimental to the public, in that it gives them but one side of the story, and tends to turn them to a form of trust management which to some may be less advantageous in their particular cases than if they had selected individual trustees of probity, judgment and experience. But there is another disadvantage to the public in unrestricted advertising by trust companies. In almost all of these advertisements readers are urged and advised to make wills or to create trusts, even while still living, and constant pressure seems to be put upon the owners of even a small amount of property to tie it up in long and elaborate trusts established by deed or will. Undoubtedly under many conditions it is wise for the individual, whether his property be great or small, to leave it in trust since otherwise it would be immediately squandered or lost in speculative investments, but in many other cases a trust is most unwise, and the beneficiaries would be better off both morally and materially if they received their inheritances outright. The rule of the dead hand is not always wiser than the judgment of the living, who can adjust their affairs to new and changing conditions, nor is a "spendthrift trust" always best for a young man who, if left to work out his own career, might develop

qualities of initiative which would make him an asset to the community. Even the making of a will is unnecessary if the devolution of property in the manner provided by law is befitting under the circumstances. A pospective testator is entitled to unbiased and impartial advice before he decides whether or not to make a will or if he makes a will whether to leave his property in trust, and such advice he will get if he submits his case to any honorable member of the bar. If, however, he relies on the advertisements and solicitation of the trust companies he will decide this important matter without independent advice, and without hearing both sides of the question, and he may come to a decision most detrimental to those for whom he wishes to provide.

Moreover, if the tendency to put all property in trust for as long a period as the rule against perpetuities will permit continues unchecked, so large a proportion of the wealth of the community will be ultimately tied up in this manner that the initiative of the individual who owns his own property outright will be lost, and a deadening effect upon the industrial and commercial lift of the Commonwealth will be the result.

A third effect of the promiscuous advertising by banks and trust companies is often to drive to their trust departments for the purpose of making wills or creating trusts many individuals who have saved a competence by years of thrift but who have no legal adviser upon whom to rely. The banks and trust companies do not undertake to draw wills or trust deeds for such individuals, and undoubtedly advise them in good faith to submit these matters to their own attorneys. If, however, as so often happens, the individual has no attorney of his own and inquires to whom he may turn, he is sent to one of a selected list of attorneys who maintain close relations with the bank or trust company in question. Such attorneys, with no knowledge of the circumstances and surroundings of the individual, are not apt to give him the benefit of the impartial advice which an individual attorney would bestow, and are likely to permit the client without objection to make a most unsuitable and improper will or trust deed provided only the trust company which sent him is made executor or trustee. While this situation does not exist in all or perhaps in most cases it occurs often enough to illustrate another danger of promiscuous advertising by trust companies.

The fundamental objection to the advertising in question is, however, the impropriety of making the establishment of fiduciary

relations a matter of bargain and sale, with no direct personal relationship of trust and confidence between fiduciary and beneficiary. No one questions the policy of permitting financial institutions to act in a fiduciary capacity. An individual may have had such long continued and satisfactory relations with a trust company or bank that he turns to it naturally as the appropriate executor or trustee under his will. Possibly he has had no attorney, or the attorney who has served him zealously and well in the trial of cases or in the drafting of contracts he does not deem as well qualified as his bank to act in a fiduciary capacity. In many instances a testator may know a bank or trust company only by reputation, but its reputation may be such that he is ready to seek its advice and to entrust to it the care of his estate after his death. In all such cases the proper relation of trust and confidence exists. But when a trust company or bank seeks fiduciary appointments solely for the profit to be derived from the appointment, and by the same methods that an automobile dealer sells his wares, the basis of trust and confidence which should underlie all fiduciary relationships, and the right to rely on impartial advice whether and to what extent to enter into such relationships, are wholly lacking.

It follows, therefore, that advertising by corporate fiduciaries not only constitutes an unfair competition with members of the bar who are restrained by legal ethics from advertising, but also is detrimental to the public interest in many particulars.

It has been suggested that the lawyers might meet this competition by publicly advertising the advantages of appointing individual fiduciaries. While the lawyers as individuals cannot advertise, there would be no ethical objection to an advertisement sponsored by the Bar Associations or by any other group of lawyers, setting forth the advantages of individual fiduciaries over corporate, and thus both sides of the question would be put before the public; but while such advertisements might be phrased in a dignified way, it would be impossible to meet the situation adequately without pointing out some of the disadvantages of corporate fiduciaries, and the spectacle of the two types of fiduciaries competing in the public press by mutual derogation would not be desirable from any standpoint. So also the disadvantages of urging property owners to make wills or to put their property in trust would not be met.

Further discussion with the representatives of the Corporate Fiduciaries Association is not likely to be productive of results. While a committee of that association has in good faith and success-

fully undertaken to prevent a continuance of the practice of including in the advertisements of corporate fiduciaries slurs upon the integrity and capacity of individual executors and trustees, the members of that committee frankly upheld the propriety of advertisements by a trust company or bank urging the public generally to make wills and to establish trusts and to appoint such trust company or bank executor or trustee and were unwilling to agree to any limitation upon their right to publish such advertisements, either by legislation or agreement.

Advertising by trust companies, if it is not to continue unchecked, must be restricted by legislation. While appreciating the objections to adding to the growth of the restrictive legislation which fills the statute books annually, all the members of the committee nevertheless feel that it would be in the public interest if a statute were enacted prohibiting corporate fiduciaries from advertising their trust departments or soliciting appointment in a fiduciary capacity except in a way not likely to induce members of the public to make wills or appoint fiduciaries without an adequate understanding of the advantages and disadvantages of what they are doing.

The majority of the committee recommend that the association advocate the enactment of a statute prohibiting any advertising by individuals or corporations for appointment as fiduciaries, other than a statement by duly authorized corporations that they are qualified to act as such.

Mr. Thompson recommends that the association advocate the enactment of such a statute as was before the Legislature at its last session, prohibiting the solicitation of employment by corporate fiduciaries by such means as would, if employed by an association of members of the bar, be a violation of the standards of professional conduct recognized and enforced by the courts of this Commonwealth.

Mr. Thompson, in support of this recommendation makes the following statement:

This bill undertakes to define in general terms the sort of advertising that corporate fiduciaries may publish, leaving it to the Supreme Court to determine in any case whether that advertisement would be a violation of the standards of professional conduct recognized and enforced by the courts of this Commonwealth if published by a bar association or other association of lawyers. We are not dealing with a criminal statute, but with certain undefined

standards of professional conduct, leaving the court to work out what they are as cases arise, just as the courts have done with the expression "due process of law". That is the best way, in my opinion, to deal with a subject of this kind.

Now I think it would be undoubtedly a violation of professional ethics which the Court would recognize for a bar association to publish an advertisement of the advantages of individual trustees which contained nothing as to the disadvantages or dangers of individual trusteeships. In other words, the standards of professional conduct are so high as to require of lawyers absolute fairness in their dealings with the public. At any rate, no court would be likely to say that professional standards were any lower than that. Now turn the situation about, and apply those standards to trust companies. No advertisement that was not a substantially fair statement of both sides of the case would be permitted, and if it came to that, the inevitable result would be that the trust companies would get together with the bar associations and agree upon a statement fair to both, which would be published, if at all, at the expense of the trust companies. If the trust companies thought that there would be no business advantage in publishing a perfectly fair statement of the pros and cons of the matter, then there would be no advertising; and that, I think, would not be an undesirable result.

I cannot concur in the recommendation of the majority of the committee.

You will find, I think, if you try to draft a statute which draws the line of demarcation between permissible and non-permissible advertisements for trust companies, that it will be impossible to do it. You will either say too much or too little. It seems to me emphatically that the best way is to adopt a known standard, however vague, *i.e.*, the standard of professional conduct recognized and enforced by the courts, and trust the Supreme Court to work out the details in cases as they arise. If you permit any sort of advertisement by trust companies, lawyers are still going to be at a disadvantage unless they too, either individually or by their associations, can publish something; and I don't think it is desirable that lawyers should be encouraged to advertise, even through their bar associations. And as I have said, my bill is not likely to work out in a way which will tempt bar associations to advertise, unless they think it worth while to publish from time to time a perfectly impartial statement of the pros and cons of individual and corporate trusteeships—such a statement, for example, as I think the statutes contemplate for the information of voters on referenda.

Mr. Rugg concurs in the recommendation of the majority of the Committee, but does not concur in the statement of economic grounds as one of the reasons for its conclusion, for the reason that these grounds affect the whole community and are not peculiar to lawyers and could be more appropriately urged by some class other than members of the bar.

Respectfully submitted,

PHILIP NICHOLS, *Chairman*,
ARTHUR W. BLAKEMORE,
W. G. THOMPSON,
CHARLES B. RUGG,
ALBERT M. CHANDLER.

THE PRESIDENT.—It is suggested that the report be received and its recommendations referred to the Executive Committee, and that in view of the fact that legislation was referred to the next General Court and is likely to come up, I understand, at the next session of the Legislature, the special committee be continued in existence.

MR. E. A. WHITMAN.—If the special committee is to advocate the recommendations which have just been made, I am certainly opposed to it. I think that had much better be left to the Executive Committee.

THE PRESIDENT.—As I understand it, Mr. Whitman, the special committee could not advocate the recommendations without the authority of the Executive Committee.

MR. WHITMAN.—I move, sir, that the recommendations be referred to the Executive Committee for their action.

[The motion was carried.]

THE PRESIDENT.—Does the Association desire to take any action on the matter of continuing in existence the present special committee?

MR. STORY.—I move the present special committee be continued.

THE PRESIDENT.—The next matter is the report of the Nominating Committee, which I will ask the Secretary to read.

THE SECRETARY.—Mr. Green, the acting chairman of that Committee, is unable to be here. You have all received the report in print.

The Secretary read the following report:

REPORT OF THE NOMINATING COMMITTEE.

To the Members of the Massachusetts Bar Association:

Your Committee reports the following nominations for officers for the year 1925-1926:

For President:

FRANKLIN G. FESSENDEN of Greenfield

For Vice-Presidents:

FREDERIC DODGE of Belmont
WILLIAM CALEB LORING of Boston

For Secretary:

FRANK W. GRINNELL of Boston

For Treasurer:

JOHN W. MASON of Northampton

For Members of the Executive Committee:

FRED F. BENNETT of Holyoke
ARTHUR W. BLAKEMORE of Newton
WENDELL G. BROWNSON of Springfield
FRANCIS BURKE of Boston
FREDERICK H. CHASE of Milton
FRED T. FIELD of Cambridge
FRANCIS P. GARLAND of Boston
JAMES A. HALLORAN of Norwood
BERT E. HOLLAND of Boston
EDWARD A. MACMASTER of Bridgewater
FREDERICK W. MANSFIELD of Boston
JOSEPH MICHELMAN of Boston
CHARLES MITCHELL of New Bedford
PHILIP NICHOLS of Boston
EDWIN G. NORMAN of Worcester
ROBERT C. PARKER of Westfield
JAMES M. ROSENTHAL of Pittsfield
HOMER SHERMAN of Charlemont
MICHAEL A. SULLIVAN of Lawrence
FRED N. WIER of Lowell
JOSEPH WIGGIN of Malden

The President, the Retiring President, the Secretary and the Treasurer are members of the Executive Committee *Ex Officio.* Other nominations may be made in writing signed by not less than nine members and sent to the Secretary before the annual meeting.

Respectfully submitted,

for the Committee,

ADDISON L. GREEN,
Acting Chairman.

THE SECRETARY.—The Secretary has received no other nominations thus far.

A ballot was taken and the several nominees were declared duly elected.

THE PRESIDENT.—The next and final matter is the discussion of the recommendations in the report of the Judicial Council and, in connection with it, that part of the report of the Committee on Legislation which recommended the approval of all those recommendations.

MR. WHITMAN.—I move the adoption of the recommendation of the Committee on Legislation. It is most unusual that this Commonwealth is favored with a commission or council so distinguished for experience and ability and its reports should have weight with the Legislature. At the same time all of us know in past history that very important recommendations have been made by commissions of ability and experience and no attention has been paid to them by the Legislature because nobody appeared to favor them, and the Legislature said, very properly, "If this is the opinion of three or four men and is not the opinion of anybody else, there is no reason why the Legislature should pay any attention to it." Now, if we are to have any changes or reforms in our judicial procedure the way has been opened to have them, and unless the Bar as a whole wants them no judicial commission, in my judgment, can get them through the Legislature. It therefore seems to be the duty of every lawyer in the Commonwealth to get behind those recommendations and urge upon the members of the Legislature by individual action that they should be adopted. There may be some individual criticism of this or that measure which those gentlemen may desire to express, and the committee hearing is the place for it. But so far as the Bar as a whole believe in their Judicial Council and in the measures which they are endeavoring to promote, it

seems to be the duty of this Association to do everything in its power to see that the Legislature is fully informed as to the feeling of the Bar.

[The motion was seconded.]

THE PRESIDENT.—May I inquire, Mr. Whitman, in the interest of complete understanding, whether your motion goes beyond the specific recommendations that are accompanied by drafts of proposed acts or resolves?

MR. WHITMAN.—I think the report of the legislative committee was limited to that—to measures which have been proposed as acts.

THE PRESIDENT.—And your motion was intended to be so limited?

MR. WHITMAN.—Yes.

THE PRESIDENT.—Of course this printed report has been mailed to all the members of the Association and we may assume that it has been given more or less consideration. It was hoped that it would receive some genuine discussion today.

MR. DALLINGER.—It seems to me that it might be well for some one who is familiar with the specific recommendations to say something about them, for this reason: If the matter should come up before the committee of the Legislature and our Legislative Committee should be asked if a vote of the Massachusetts Bar Association was taken without any discussion whatever or any explanation, from my experience I should say that it would have a bad effect upon the committee of the Legislature. I think it might be well to have something said, although most of us may have read the report.

MR. WHITMAN.—May I say just a word in answer to that, for I may have misunderstood? If the action of the Association is to be limited to the vote to be passed at this meeting, I entirely agree with the gentleman; but my idea was that the Legislature ought to know not only what the comparatively few here have voted but what the Bar of the State in general desire.

MR. HOLLIS R. BAILEY.—I would like to move that the question be divided. There are various pieces of legislation which have been framed and put forward by the Judicial Council. I am in favor myself of all but one. Others here may have views in a similar way. What I am specially interested in is this: There is an official body which has now been in existence for some thirty years, created by the Legislature, known as the Commissioners on Uniform State Laws, and they are working with commissioners

appointed by all the jurisdictions of the United States and for four or five years they have been working on the subject of declaratory judgments. In 1922 they agreed after several years' work on the form of a bill to give the courts jurisdiction for declaratory judgments. That was approved by the American Association in 1923. That uniform law has been adopted in eight of the States, some of the principal States of the Union. The Judicial Council has framed a bill to be introduced in the Legislature which is considerably different. Its purpose is the same, but if uniformity means anything I think it would be better to have the uniform law adopted in Massachusetts, and it would be the duty of Professor Williston and Mr. O'Connell and myself to present the uniform law to the Judiciary Committee in January and ask them to approve that rather than the bill introduced by the Judicial Council. One may be better or worse than the other, but I think this meeting should know that there are two bills to be introduced and something to be said in favor of each of them, and if you have not studied the matter I think that the uniform law has a presumption in its favor. The first address that was made by Mr. Hemenway as President of the Massachusetts Bar Association was to this effect—that this Association would be worth while and would jutify itself if it did nothing more than further the work of uniformity of legislation. And I hope that these different bills may be considered separately and not in a lump.

MR. STARR PARSONS of Lynn.—I hope somebody will explain briefly what the recommendations are. I have not had an opportunity to read the QUARTERLY. I would like very much to lend my aid, but I would like first to know what the proposed legislation is.

THE PRESIDENT.—Mr. Grinnell, can you help us in that particular?

THE SECRETARY.—Mr. President, I would like to say a word or two by way of explanation. Mr. Mansfield and I are both members of this Judicial Council and I think both he and I and the Council as a whole would be very glad to know of any expression of opinion from any of the members present or not present on these various recommendations. As I have said at previous meetings of the Association, one of the valuable things about these meeting is to get individual expressions of opinion from members of the Bar from different parts of the State on measures which are put before them. Sometimes that is more important than actual votes on the subject, because the meetings are necessarily small.

A word or two about the nature of the Judicial Council for those of you who are not familiar with it. It was created in 1924 as the result of the recommendation of the Judicature Commission of 1921. It is a purely advisory body. We have no powers whatever except to work, we have done a good deal of that,—and to make suggestions. The report is filed with the Governor as the representative of the entire population of the States on the working of the judicial system, and with such recommendations as the Council make which they hope would improve it.

The report is sixty-eight pages long, with an appendix considerably longer, containing a number of more detailed reports from different sources on some of the subjects dealt with in the report. It contains an account of the suggestions and recommendations made by the Council during the year to different courts in the matter of rules and matters of practice which do not require legislation. Then there are fourteen separate draft acts in Appendix C which were recommended for the reasons explained in the body of the report. I will explain them briefly.

First, "An act to Further the Prompt Administration of the Criminal Law." This is simply to continue in force the act of 1923 allowing the Chief Justice of the Superior Court to call up justices of the district courts to sit in the Superior Court with juries in the limited classes of criminal cases with which they are accustomed to deal downstairs. That act was adopted for three years as an experiment for the relief of the Superior Court; it now expires July 1, 1926. It has had a marked effect in reducing the congestion in the Superior Court and the Council recommend its continuance as absolutely essential to more prompt administration of the criminal law—as providing a reserve judicial force for the Chief Justice of the Superior Court to call upon from time to time when needed.

The second is "An Act to Provide for Election of Jury Trial in the Municipal Court of the City of Boston and for Review of Sentences there imposed." That act is substantially the same as the act recommended by the Judicature Commission in 1921. It was recommended then, as it is recommended now, as an experiment in the Boston court alone. The Committee on Judiciary of the Legislature in 1923 reported the idea favorably but changed the bill to apply to all the district courts in the State. That made everybody's hair stand up on end all over the State. They had adopted, the year before, a new practice in regard to civil appeals

and the courts were just getting used to it. This report by the Judiciary Committee that an entirely new practice in regard to criminal cases should be adopted throughout the seventy-two or seventy-three districts in the State met with marked opposition and the plan was defeated in the Senate. The Judicial Council, however, has renewed the recommendation, in its original form, as an experiment to be tried in the Boston court, just as the civil appeal system was tried in 1912. After that court had successfully administered that system for ten or twelve years it was adopted throughout the State. The Council believe that the judges of that court are competent, with their experience on the civil side of the court, to take this criminal act and make it work there. If it succeeds we will have the benefit of that experience, and if it seems advisable to extend the system later or to vary it, that can be considered. The Council explains in its report that it is an experiment which ought to be tried in order to avoid the present system of criminal appeals, which is one of the weak spots in the whole administration of criminal law all over the country. It is not merely a question, however, of electing a jury trial in the Municipal Court. The plan is for a man after he is arranged to be asked by the court whether he claims a jury trial. If he does he is sent directly to the Superior Court for trial; if he does not, he will be tried below. There will be no appeal on the facts. In other words, he will claim a jury trial just as he does in a civil case in a sense, except that he will claim it downstairs. Then, after the trial in the Municipal Court, if he stays there there will be an appeal on any questions of law to the present Appellate Division of the Boston court which deals with civil appeals on questions of law. There will also be—and this is the point that I wish to emphasize very clearly indeed—there will be a reviewing division of the Municipal Court, with the power of summary review of sentences. This will afford the defendant the only thing he is really entitled to under those circumstances, a fair hearing in regard to the sentence. That court will have all the powers of the original judge in regard to the sentence and may modify it or increase it if necessary. That will be a real judicial tribunal dealing with the sentences, instead of the present combination of appeal of a district attorney or his assistant and a judge who does not know much about the case, and a probation officer and nobody knows how many other people, all trying to do a thing that ought to be finished in the Municipal Court. It is common knowledge that the present system is a mess. The continuance on the

statute books of the act allowing the Chief Justice of the Superior Court to call up district court judges will provide him with an additional reserve so that he can provide trial in the Superior Court for removed cases just as he does now for appealed cases. You probably all know that that act has been quite effective in checking unnecessary or unwarranted appeals. In the same way there is no reason why it would not work in checking unwarranted removals. That it is an experiment is obvious. On the other hand, no matter what we do, we are trying experiments, and the Council feel that this is an experiment which is not only worth while but which ought to be tried. So far as any question of constitutional law is concerned, this is simply an application of the idea of waiving jury in the district court, which is the basis of the whole district court system. In every case today where an appeal is not claimed the jury is waived. And so there is absolutely no question of constitutional law involved in this act.

The third act is "An act to Provide for Waiver of Jury Trial in the Superior Court in Criminal Cases other than Capital Cases." This act provides that a defendant in a criminal case in the Superior Court below the grade of a capital case, whether appealed or an indictment case, may waive a jury in that court and ask for a trial without a jury. That, as most of you have doubtless read, is a matter which has recently come before the entire American Bar in the leading article in the American Bar Journal for November, which contained Chief Justice Bond's account of the practice in Maryland which has been the rule there for over a century. In fact, it is the survival of the practice of the seventeenth century in Maryland, which was similar to the system in Massachusetts at that time. The practical result is that in the city of Baltimore in 1924 there were 4499 criminal trials and a jury trial was *asked for* in only 180. The criminal court is sometimes so close on the heels of the Grand Jury that they are ready to give trial the day after indictment, and they have to put it over to give the prisoner a little time to prepare. They have no problem of delay in the administration of the criminal law in Baltimore and it is obviously the result of this system. The fact that so many of the criminal cases are tried without a jury and to the apparent satisfaction of the defendants and their lawyers and the community is a fact which deserves the attention of the Bar all over the country.

The same system was adopted in Connecticut in 1874. There was some discussion and dissatisfaction and the law was repealed in

1878. Forty-three years later the Legislature again adopted a similar statute. The assistant clerk of the Hartford court writes about 70 per cent of the cases are tried by the court without jury at the request of the defendants. Some of you may have noticed that at the beginning of the Chapman case Chapman was brought into court and asked if he wanted a court trial or a jury trial, and he elected a jury trial. Accordingly, this is no new scheme; it has been tried, and effectually and satisfactorily tried, to the satisfaction of the community not only in Maryland but in a state as close to us as Connecticut. How far it would be used here, being an optional arrangement, nobody can say in advance. It is a plan which, being new to the community, would, without doubt, have to start gradually. As you know, the Superior Court judges started the practice under the present statute and there are one or two cases on their way to the Supreme Court as to whether the statute and constitution authorizes this practice. The Council has expressed no opinion on the question of constitutional law so far as felonies are concerned, started by indictment in the Superior Court. They *have* expressed the opinion that so far as appealed cases are concerned, there is no reason why a man who can waive a jury trial by not appealing downstairs cannot waive the same right by specific request upstairs. It is only a different room in the court house.

On the question of indictment there is a somewhat different question. The statutes as they are now drawn do not recognize the right to waive. But there is the question whether or not a man does not still have the right to waive such a right if it is merely a right, or whether or not it enters into the jurisdiction of the court to such an extent that it is a jurisdictional requirement. That subject has been discussed at some length in various places, but on that point the Council have expressed no opinion, as it is a matter upon which the Legislature, if it should act on the matter, would probably wish to seek an advisory opinion from the Supreme Court. They do, however, subject to the question of constitutionality, recommend that in all cases other than capital cases the defendant should be allowed to waive a jury and request a trial by the court by leave of the court. It is not absolute, in the form in which they recommend it; there is still a discretion allowed the court, so that in certain cases it may or may not be granted.

Those are the three recommendations thus far made in the subject of criminal practice and procedure. The next recommendation is "An Act to Expedite the Collection of Debts," which is simply

an extension of the present No Defense Act, putting a little more teeth into the act along the lines which were drawn from the English practice of summary judgments, by which the plaintiff files what is called a specially endorsed writ and then has a right to take out a summons returnable in four days before a master. The defendant then has to file an affidavit of defense, and not only that, but he has to go before the master and satisfy the master that he has got a defense which he is fairly entitled to try. If the master is satisfied that he has one he gives him leave to defend, either in whole or in part, and if he is satisfied that he has no defense he enters judgment forthwith either for a part or the whole of the claim. They are not troubled with constitutional rights to a jury trial over there, so that in 1923 between six and seven thousand summary judgments, ranging from small amounts to millions, were disposed of in that way, as you will see by reading the very interesting and illuminating report by Professor Sunderland. I think it is the best thing that has been written on English procedure on this side of the water, so far as explaining to American lawyers the nature of civil practice in England is concerned and the reason why they have succeeded since 1875 in dispatching so much business as they do now. They have developed into the most effective tribunals.

The substance of this act recommended by the Judicial Council is to provide for an affidavit of no defense and a hearing, as under the present statute. The present law only provides that the judge may advance the case for speedy hearing. This proposed act provides that he may order a provisional judgment for the amount of the claim, unless the defendant within seven days files a demand for a trial and the court may then order the case advanced for speedy hearing, but if he does not ask for a trial after that provisional decision of the court, then the judgment shall go into effect. That protects fully his right to jury trial and it also provides for a judgment similar in character, but not in the detailed procedure, to the English summary judgment which is so effective.

The next act is "An Act to Establish Procedure for Declaratory Judgments." Mr. Bailey has already referred to that subject and explained that the commissioners on uniform laws have recommended another draft act. That draft act was submitted to the Council and considered carefully, as it was considered before by the Judicature Commission. The Judicature Commission submitted another draft which was printed in their report, which was

shorter than the uniform laws draft. Both those plans, together with the discussion of them by Professor Borchard and by a committee of the Bar several years ago, were considered by the Council. The Council felt, as they have stated in their report, that the act of sixteen sections of the uniform laws commission was longer than was necessary in this State. The Council also felt, and so stated, that they did not believe that uniformity of legislation relating to court procedure was desirable or in the line of progress; that they felt that court procedure was peculiarly a matter for local experiment in effectiveness and promptness. They also believed, in view of the various drafts that had been submitted and the history of this practice, which has been going on for three hundred years in Scotland and for sixty or seventy years in England effectively, the wiser course in Massachusetts was to follow exactly the English rule which had been worked under for some fifty years and which consists of four lines. Accordingly they have drafted the act in four lines, with the belief that if the English courts can administer such a rule fairly, the Massachusetts courts can do the same thing without doing anybody any harm and that there is no use in extending the language of the statute. Furthermore, you have the entire body of English judicial experience behind that rule as a guide to practice, and the Council believe that there is no danger that the Supreme Court will take on the burden of deciding moot cases where it is not going to do anybody any good.

The next act provides that the court shall take judicial notice of the law of other states and countries, thus changing the present rule in Massachusetts, which is that if the question is easy and is answered by a single statute or decision, it is for the court to decide, but if you have to have a whole library of books of conflicting decisions and expert testimony, the question of law is for the jury to decide. The Council feels that that is an absurd situation and, as Professor Thayer pointed out in his book, the question is one of exactly the same nature whether it is domestic or foreign law, and it is one which ought to be decided by the court. The Council feel that the jurymen who are now asked to decide these questions would consider that a business-like and simple solution of the problem.

The next act is a short act—most of these acts are very short—in about half a dozen lines or so. It provides that the Superior Court shall have the power to make its own rules in equity. When equity jurisidiction was first established in the Superior Court in 1883, the judges of that court were not familiar with equity prac-

tice. But now, after forty-odd years of the development of business under this statute, practically all the equity business of the Commonwealth is done in the Superior Court. Under those circumstances, if the court has the responsibility of administering, it also ought to have the power of making its own rules.

The next act is an extension of the present act, inserting a little more teeth in the statute, for the admission of facts and documents. I do not think it is necessary to go into the details of that act. We have the substance of it now; this is an attempt to make it more effective.

MR. BAILEY.—You have left out one act.

THE SECRETARY.—I beg your pardon. There is also an act relative to interrogatories. As you all doubtless know, in the motion session in Suffolk County the problem of dealing with interrogatories is a very serious one. An enormous number of interrogatories are filed, often ranging up into the hundreds, and in one case there were twenty-two hundred interrogatories filed. The burden of ruling on all those interrogatories is a very considerable one on the court. The recommendation of the Council is that the Superior Court shall have the power to limit the number of interrogatories which may be filed as of right, with the power to allow subsequent interrogatories by leave of court, and that on any motion to compel answers or to file further interrogatories, the court shall take into consideration any offer of evidence or admissions which the party interrogated may see fit to make. In other words, the practice here which originally grew up when parties were not allowed to testify is now a practice the purpose of which is to eliminate undisputed issues. It is also a practice which has great possibilities of abuse and of causing inconvenience and delay and unnecessary work. The English practice contains no absolute right to interrogate, as we have here. The test applied by the courts there is as to whether or not it will assist in expediting the trial or saving costs. The feeling of the Council was that if this matter were thus put in the hands of the Superior Court, and if instead of answering a long list of detailed interrogatories, many of them filed in order to anticipate evasive answers, if the court should take into consideration the admissions which the other side was ready to make, it might well help in the more prompt disposition of that business and relieve the motion session.

The next act relates to exceptions in suits in equity. There has been a considerable amount of discussion of exceptions in equity

and it is constantly stated that an appeal is the proper way to go up in equity. The Council felt that exceptions might still be useful in equity in various ways, and the only difficulty was to find a way of getting a case up in a proper manner. Accordingly, they recommend that a final decree may be entered notwithstanding the exceptions, but that the decree shall then be stayed until the exceptions are disposed of, thus enabling the party to go up either with his appeal or with his exceptions in case he does not want to print the entire record on appeal. In that way the present difficulty would be obviated.

The next bill is a recommendation that all the present financial jurisdictional limits of the district courts should be removed and that a man should be allowed to bring suit for any amount he saw fit in any district court; but that if the ad damnum exceeded $5,000 in the Boston court, which is the present limit, and $3,000 in the other district courts which is the present limit, the defendant should have the right to remove the case not merely for jury trial, as is the present provision under the present civil jurisdiction, but for trial either with or without jury in the Superior Court, in case he felt in a large case involving certain questions of law and fact that he would rather have a Superior Court judge than a District Court judge; otherwise, if he did not see fit to remove it, it would be tried downstairs.

There is a full explanation of the reason for that in the report. The whole matter of restricting these cases has considerable history behind it. The Council feels, as the Judicature Commission also felt, that where both parties are satisfied to try downstairs, as they undoubtedly are in many cases, even though the amount exceeds the present limits, there is no reason why they should not be allowed to do so. This free right of removal is substantially similar to the right of removal from the Superior Court to the Supreme Court in equity cases, which was established in 1883, because the Legislature did not know whether parties would be satisfied with an equity decision of a Superior Court judge. The right of removal has very seldom been used in equity and there is no reason why the same plan should not be tried in this connection.

The evidence in regard to this matter in the Boston court is interesting. The statistics at the end of the report show that since the jurisdiction of the Boston court was raised to $5,000, the number of civil entries in the first ten months of 1925 between $2,000 and $5,000 was about 700 cases. Of that number of cases only about

140 were removed to the Superior Court, thus indicating that more than 500 out of 700 cases between $2,000 and $5,000 were brought in the Municipal Court and were tried there because the parties were satisfied to have them tried there. If that is so under the present practice in the Municipal Court of the City of Boston, it is reasonable to expect that there are a very considerable number of cases throughout the Commonwealth where both parties would be satisfied to try in the lower courts, and if they are allowed to do so it will be cheaper for them and cheaper for the Commonwealth and everybody concerned. Furthermore, in the cases in which there is no defense and where there is never any trial, the clerical expense of dealing with those cases downstairs is less than it is upstairs, so that the public has an interest in it from that point of view. Chief Justice Bolster pointed that out very clearly some years ago. We generally forget that most cases are disposed of without trial.

The next act is "An Act Concerning Inquests." At present there is a mandatory provision that in every case of death by a railroad train or street railway car or automobile there must be an inquest. Some 827 such inquests were held by districts courts during the past year. Often it is a perfectly unnecessary proceeding. Accordingly we recommend that the matter be made discretionary with the court unless the district attorney requests an inquest, and then it shall be mandatory.

The next act provides that in districts of over 100,000 population there shall be three special justices of the district courts, because in these larger districts the business is growing and it is often difficult to meet the demand on the court. That has been done in several special courts, but at the suggestion of the administrative committe of the district courts the Council recommends that this be done as to all the courts in those larger districts above one hundred thousand. The expense to the Commonwealth is simply the expense when those judges are sitting when they are needed, because they are not paid when they are not sitting.

The last recommendation is a renewal of the recommendation of the Judicature Commission that the provision of the act of 1915, now in the General Laws, as to the requirements for admission to the Bar, which sets the standard of general education in Massachusetts at two years in "a day or evening high school or a school of equal grade," which means nothing whatever because there is no standard evening high school, be repealed, and that the matter be left where it was before 1915, in the hands of the Supreme Court,

and that they be trusted to regulate it fairly as they are trusted to perform all their other important duties.

That is an abstract of all the bills which we have recommended.

MR. BAILEY.—I should like to ask Mr. Grinnell whether the New York practice to expedite the collection of debts was considered by the Council. I was told in Philadelphia a year ago that their law which must be almost the same as you have formulated, works very well. Where they have no defense they get a judgment in a very short time.

THE SECRETARY.—I am glad you mentioned it, and if we have not considered it we will consider it.

I would like just to say one more word, and that is, I hope anybody who has any suggestion to make to the Judicial Council will not hesitate to make it at any time.

THE PRESIDENT.—The question is upon the motion of Mr. Whitman, that the Association adopt the recommendation of the Committee on Legislation.

MR. LEE M. FRIEDMAN.—Mr. President, I think the report is so admirable and stimulating that I do not want to say anything in the way of a dissent; but at the same time there are one or two suggestions in this report that deserve very serious consideration, because they point a way of departure from our Massachusetts ideas on some subjects. That is, the act on page 143 regarding interrogatories and I think the one on page 144 and the one on page 141 involve the question of policy regarding costs in civil cases. The committee this year suggests that we make costs substantial in our litigation.

THE PRESIDENT.—That is not involved in this motion.

MR. FRIEDMAN.—I know, but those three acts start the legislation in that direction, because every one of those three acts involves the imposition of additional costs under certain circumstances, and I take it that is a question of policy and it cuts pretty deep. That is, you who have seen the practice in England as shown by a solicitor's bill which appears in these reports, and know that in every large solicitor's office in London there is a clerk who is called a taxing clerk, who makes a specialty of costs, and know that there are masters who are called taxing masters, to whom these questions of costs are referred, and the whole law on the subject, hope that that is not going to be introduced in Massachusetts and that at least we can keep our litigation simple and our costs not an object of the attorneys in the conduct of their suits.

THE SECRETARY.—I am glad Mr. Friedman spoke about that. I forgot to mention that subject of costs. As the Council state in the report, that whole subject is one which they still have under consideration and they feel that the administration of costs is one of the effective methods by which the English courts are enabled to dispose of their business. The Council have suggested in these three acts that the court be given the power to put teeth into these particular measures by the imposition of costs, including reasonable counsel fees, after summary hearing on the matter, where the refusal to answer or the refusal to admit was unreasonable or vexatious or evasive or something of that kind, in such a way as to delay the proceeding. That is a new departure and it is made because they feel that it is only by that method that this thing can be put into effect.

MR. MCCLENNEN.—I should like to put Mr. Bailey's suggestion into definite form by moving an amendment to Mr. Whitman's motion that we shall pass on these fourteen acts separately. I do it for two reasons. I should be perfectly willing to support a motion expressive of confidence in the Judicial Council and let the matter go at that. I do not want to be committed to the approval of some of the specific acts. That is one reason for this motion. The other is, it seems to me that our action may be more effective with respect to those acts on which we are really unanimous if taken separately than if we proceed in what appears to be a more perfunctory way to adopt the suggestions of the Council.

The only specific application that I personally desire to make of this is in respect to the rules of the Superior Court and the matter of interrogatories. It seems to me as long as we have two courts of superior jurisdiction acting as courts of first instance in equity matters, that it is desirable that the rules of court in the two courts should be the same, and therefore, tentatively at least, I am opposed to that act.

As to interrogatories, I am opposed to the act because I strongly believe it will not relieve the burden on the Superior Court. I think that instead of their being called upon to pass on a large number of interrogatories in the cases in which they are filed, they will be pestered to death with applications to file additional interrogatories where the needs of the case exceed the number of interrogatories that the specific statute would give a right to. And also, if we want to relieve the Superior Court of this great burden of dealing with interrogatories, I am inclined to think that we could

accomplish much more by permitting what is permitted in other States, oral examination of the adversary before trial. The great number of interrogatories that are filed in many of these cases are in such anticipation as the imagination will furnish of what the answers of earlier interrogatories may be. If we had an oral examination of the adversary before trial, properly under the supervision of the court and usually in practice not in the presence of the court, a great deal of the difficulty coming on the court in handling interrogatories would pass out of existence altogether. I suppose that the members of the Council are familiar with the way it works in other States, where, although theoretically before the court, it is actually in the office of the counsel of the examining party or of the other party, and there is no occasion to go before the court on any of those questions except those which are of real vital importance; and those questions, when they are of materiality in the course of an examination, will frequently be but few. Therefore I move as an amendment to Mr. Whitman's motion that we consider the approval of the report of the Judicial Council separately with respect to the fourteen acts recommended.

[The motion was seconded.]

MR. STOREY.—May I ask what the question is now—what the motion pending amounts to?

THE PRESIDENT.—The motion of Mr. Whitman was that the recommendation of the report of the Committee on Legislation be adopted, which recommendation I will read:

> "At a meeting of the Committee held this afternoon prior to the annual meeting of the Association, the recommendations in Appendix C of the the first report of the Judicial Council were considered, and it was recommended that the Association take active steps to enlist the co-operation of its members and also of the County Bar Associations in the promotion of the adoption at the coming session of the Legislature of all the measures recommended by the Judicial Council."

That, of course, refers to what is contained in Appendix C, which includes the fourteen acts which Mr. Grinnell has explained.

MR. STOREY.—It does not express any opinion of this Association on the wisdom of the recommendation?

THE PRESIDENT.—I should say that it did, Mr. Storey—"that the Association take active steps to enlist the co-operation of its members and also of the County Bar Associations in the promotion of the adoption at the coming session of the Legislature" of

each of these recommendations, the acts recommended. It is now moved and seconded that Mr. Whitman's motion be amended by providing that each of the fourteen acts be voted on separately. Are you inclined to accept that amendment, Mr. Whitman?

MR. WHITMAN.—It is now nearly six o'clock and I take it that it would take about two hours more to do that.

MR. STOREY.—I understand that exception is taken to only three of them. Why should we not vote on the other eleven as a whole?

THE PRESIDENT.—Because that is not the motion to amend at present.

MR. STOREY.—I know; I asked why we should not do so. If I am in order I would like to move to amend so that we vote on eleven of them as a whole, leaving the three which have been criticised for subsequent discussion.

THE PRESIDENT.—The three being, as I recall it, those relating to declaratory judgments, interrogatories, and the rules of the Superior Court.

THE SECRETARY.—As to the collection of debts, not declaratory judgments.

MR. BAILEY.—I raised the same question as to declaratory judgments.

THE PRESIDENT.—That was the important one that stuck in my mind.

MR. DALLINGER.—I second Mr. Storey's amendment.

THE PRESIDENT.—I suppose the question first comes upon Mr. McClennen's amendment.

MR. FORBUSH.—I think I must voice the views of a good many of the members here present when I say that we do not care to commit ourselves to a blanket endorsement of every recommendation that the Council has made. I certainly would vote against the original motion if it was so made and pressed, while we do appreciate and I think we all appreciate the wonderful work that the Council is doing. I move a substitute in accordance with Mr. McClennen's suggestion—that the Association expresses its appreciation of the work of the Judicial Council but does not see fit to vote either to recommend or disapprove the recommendations which they have made. I think that should be left to the individual members. We are comparatively a small number here present. Most of us have not given much study to those matters. To me it would seem that it would be a practical thing and a thing of possibly more

substantial effect if, instead of taking a vote here on any one of these measures, we sent out some sort of a ballot to the members of the Association together with the admirable statement that has been made by the Secretary here this afternoon of the reasons for these various measures, and ask that the members vote on each one of these proposals, and then we would have something to submit to the Legislature as to the real feeling of the members of this Association.

MR. DRURY.—Mr. President, knowing how a legislature approaches these matters, I should be very sorry to see the admirable report which has been submitted by the Judicial Council lose weight and be in effect damned with faint praise through the refusal of this Association to endorse the great majority of its recommendations. It seems to me that the amendment suggested by Mr. McClennen, with the change suggested by Mr. Storey, offers a practical solution which can be accomplished tonight. If, however, we decline to take any action the report of the Judicial Council will go to the Legislature, I submit, under a heavy handicap.

MR. MCCLENNEN.—Mr. President, I am afraid I have caused a good deal more trouble than I intended. Very likely these different acts that some of us do not want to be committed on have the approval of the majority of those present, and it is quite likely that the fourteen votes will amount to the same as the one vote. But it will enable those of us who do not want to be committed to some of these acts not to be committed to them, and yet you will have the vote of the Association. Now, I am going to make another motion. I move as a substitute for the motion before the house that this Association approves the recommendation of the Judicial Council as to Act. No. 1.

MR. STOREY.—That would mean fourteen votes.

MR. MCCLENNEN.—Yes.

MR. STOREY.—And it would mean fourteen discussions.

MR. MCCLENNEN.—I have not heard that ten of those need any discussion.

THE PRESIDENT.—I don't imagine, Mr. Storey, they will take very long, most of them.

MR. STOREY.—I have been at a good many legal meetings and I have noticed that as soon as the flood gates are opened there is no limit to the discussion.

THE PRESIDENT.—There is not now.

MR. STOREY.—I should be very sorry to see this meeting result in this: "The Massachusetts Bar Association has not taken time to read the report of the Council and they cannot say whether they approve it or not, and they do not want to be committed." That would be a disgraceful position for the Massachusetts Bar Association to take in dealing with a commission that has devoted a year, as it has, to the hard work. If we are not ready to vote on these questions let us postpone them; adjourn this meeting and have a special meeting to consider them. But for heaven's sake do not take the ground that you do not know what they have reported and do not care.

THE SECRETARY.—Mr. President, I wish to make it perfectly clear that the members of the Judicial Council are not asking or urging any action by the Association. This is a discussion in order to bring out the views of methods. We have no desire to try to force anything.

MR. MICHAEL L. SULLIVAN (Lawrence).—In view of the fact that there is on the record an elucidation by the Secretary of all but one of these statutes, may I call to his attention that he omitted in his explanation the act on page 144, "An Act Concerning the Admission of Facts and Documents in Civil Cases." Since there is on the record his explanation of all the other statutes, it might be desirable for him to say a few words about that also.

THE SECRETARY.—I will be very glad to do so. Perhaps the simplest way will be to read the act. (The act was read.)

THE PRESIDENT.—Is there anything more to be said? If not, I assume the question comes first. Shall Mr. McClennen's motion be substituted for the original motion? Is the Association ready for that question? [Calls of "Question."] Those in favor of the substitution of Mr. McClennen's motion for the original motion will say Aye. Those opposed, No. It seems to be a vote. Is it questioned? It is a vote. Then Mr. McClennen's motion is that the Association approve Act 1 of Appendix C of the report of the Judicial Council. That, as I recall it—I will ask Mr. Grinnell to correct me if I am not right—simply extends the right of the chief justice of the Superior Court to call upon district court justices to hold criminal sessions, which right will expire next July unless this present Legislature votes to continue it.

[The motion was put and carried with one dissenting vote.]

MR. MCCLENNEN.—I make the same motion as to Act 2.

THE PRESIDENT.—It is moved and seconded that the Association approve the recommendation of the Judicial Council expressed in the second act of Appendix C in their report, being "An Act to Provide for Election of Jury Trial in the Municipal Court of the City of Boston and a Review of Sentences there imposed."

[The motion was put and carried with one dissenting vote.]

MR. MCCLENNEN.—The same as to Act. 3.

THE PRESIDENT.—Mr. McClennen moves that the third act recommended in the report of the Judicial Council in Appendix C, namely, "An Act to Provide for Waiver of Jury Trial in Criminal Cases in the Superior Court," be approved by the Association.

[The motion was carried unanimously.]

MR. MCCLENNEN.—The same as to the next.

THE PRESIDENT.—Mr. McClennen moves that the fourth act contained in Appendix C of the report of the Judicial Council, namely, "An Act to Expedite the Collection of Debts" be approved by the Association. Those in favor—

MR. ROSENTHAL (Pittsfield).—Mr. President, I would like to ask about one provision of that act—apparently it is made a condition precedent. You run the risk if you do not submit to judgment of having to pay costs, including counsel fees. Now, I would like to ask whether or not there is any doubt in the minds of the members of the Judicial Council as to whether that is a constitutional provision. You are practically imposing a possible penalty on a man for demanding and insisting on his demand for a jury trial.

MR. STOREY.—It merely means that a man who has no defense and puts the person to whom he owes a debt to the trouble of going into court to collect it shall pay the expense to which he puts his opponent. I have always felt that that was right and I hope we shall approve it.

MR. .—It is confined to cases where the plaintiff is going to recover $500, and so will apply to comparatively few cases. Most of the debts which we collect are less than $500.

THE PRESIDENT.—Did you read that through, Mr. Grinnell?

THE SECRETARY.—I didn't read it through. Personally I don't see any constitutional question involved in the matter referred to by Mr. Rosenthal. As to the question of $500, I haven't any particular comment to make in answer to the suggestion made. I think it is a matter to be considered further, perhaps.

MR. BAILEY.—I would like to say just a single word. That thing has worked so well, as we were told by one of the judges in Philadelphia a year ago, I have often wondered why we did not have it in Massachusetts. I think we ought to have it.

THE PRESIDENT.—The question is on the approval of this act.

[The motion was carried unanimously.]

MR. MCCLENNEN.—The same as to the next.

THE PRESIDENT.—Mr. McClennen moves that the fifth act in Appendix C of the report of the Judicial Council, namely, "An Act to Establish Procedure for Declaratory Judgments," be approved by the Association.

MR. BAILEY.—I think it would be only fair to let us go to the Judiciary Committee on that matter. The Judicial Council is going and the Uniform Law Commission is going. The act will be thoroughly discussed there and I don't think we ought to be prejudiced one way or the other by premature action. Most of you have not read—I take it hardly any of you here have read—the uniform act, and I am not going into it; we have not time. It is a good law and this one is a good law; there is something to be said on both sides.

MR. WARNER (Pittsfield).—I move that this act be postponed at this time.

THE PRESIDENT.—Do you assent to that, Mr. McClennen? Do you assent to the suggestion that the vote upon this act be postponed until we pass upon the others?

MR. MCCLENNEN.—I thought it was to be postponed beyond this meeting.

MR. DRURY.—Postponed until the end of the meeting.

MR. STOREY.—I move as a substitute that the Association approves the idea of the statute and suggests that the Legislature shall select between this form and the form proposed by the Committee on Uniform Legislation when the matter comes up for consideration.

[The motion was seconded.]

THE PRESIDENT.—Is that moved as a substitute motion to Mr. McClennen's?

MR. STOREY.—Yes.

THE PRESIDENT.—Then the question arises, Shall that motion be substituted for the motion of Mr. McClennen?

[The motion was put and the substitute offered by Mr. Storey was declared adopted.]

THE PRESIDENT.—It is a vote. The motion, then, now is that the Association approve the idea incorporated in the act to establish procedure for declaratory judgments in Appendix C of the Judicial Council's report, without committing themselves as to the form.

MR. STORY.—As between that—

THE PRESIDENT.—As between that and the recommendation of the—

MR. STOREY.—Of the Commission on Uniform Legislation.

THE PRESIDENT.—Those in favor of that motion—did you desire to discuss?

MR. WARNER.—No, not at this time.

[The motion was put and carried unanimously.]

MR. MCCLENNEN.—The same as to the sixth.

THE PRESIDENT.—Mr. McClennen moves that the Association approve the sixth act recommended in Appendix C in the report of the Judicial Council, namely, "An Act Concerning the Law of Other States and Countries."

[The motion was put and unanimously carried.]

THE PRESIDENT.—Do you move as to the next one, Mr. McClennen?

MR. MCCLENNEN.—I thought somebody else would make the motion. I move that the seventh act be disapproved.

THE PRESIDENT.—Mr. McClennen moves that the Association disapprove the seventh act contained in Appendix C of the report of the Judicial Council, namely, "An Act to Allow the Superior Court to Make Rules in Equity." Are you ready for the question?

MR. DRURY.—I think this act should be approved with the addition of a second section providing that until the Superior Court has made rules those of the Supreme Judicial Court shall stand as

the rules of the Superior Court. This I assume is necessary any way and also possibly might obviate the difficulty. I assume also that the Judicial Council would perhaps reserve the right to make changes in the form of the act. In this particular matter a second section might remove the objection to the substance. So I would like to know if Mr. Grinnell would approve the addition of such a section?

THE SECRETARY.—I cannot speak for the Council, gentlemen, but I should suppose that certainly the rules of the Supreme Court would govern until the Superior Court had made some. I understood Mr. McClennen to object to the plan of giving the Superior Court power to make its own rules.

THE PRESIDENT.—Make rules in equity.

THE SECRETARY.—Make rules in equity. The reasons for that recommendation are pretty fully stated in the report, and I think myself they are pretty strong reasons.

MR. SHERMAN (Charlemont).—Mr. President, it seems to me, to enable us to vote intelligently, if Mr. McClennen would state briefly his reasons for opposition to that legislation, it would help us.

MR. WARNER.—Mr. President, if I might be permitted a moment, it seems to me we would be fortunate if we secured a part of these most excellent recommendations and it seems to me eminently wise if we can vote unitedly upon certain things. We have been that, doing it well. Now if there is a division of opinion on certain matters it seems to me those things might be discussed here; let us find out how many of these recommendations we can stand unanimously for and have the legislative committee or some committee present these matters to the Legislature. That is why I suggested postponing controversial matters and I make that motion now in regard to this.

THE PRESIDENT.—A motion to amend the substitute is not in order. Mr. McClennen, do you care to answer the question any more fully than you have in relation to your objections?

MR. MCCLENNEN.—I think I have already stated all I cared to.

THE PRESIDENT.—I thought so.

MR. MCCLENNEN.—My view is that so long as the Superior Court and the Supreme Court are exercising the general jurisdiction co-ordinately, the rules in the two courts should be uniform and therefore they should be made by the Supreme Court. I have no doubt whatever that if the Superior Court because of the peculiari-

ties of its situation desires any rule which relates to its own operations, it will have no difficulty whatever in getting that rule from the Supreme Court if it is a wise rule.

THE PRESIDENT.—The Chair understood you had stated that before.

MR. MANSFIELD.—Mr. President, of course neither Mr. Grinnell nor I nor Judge Milliken, who is here, if we speak, attempt to reflect the attitude of the Judicial Council. It is only our own personal opinion. I do not wish to duplicate the argument that appears in our report, but I would like to say this in reply to what Mr. McClennen has just said: The reason that the Supreme Court has made the rules in equity is because originally our Superior Court never had any equity jurisdiction at all. In fact, our Supreme Court never had any equity jurisdiction as a matter of right under the constitution until it was given to it by the Legislature. Now, the Legislature first gave the equity power to the Supreme Court and the Superior Court did not have it. For that reason the Supreme Court, being the only court that had the power, was the only court that made the equity rules. Later, when equity jurisdiction was extended to the Superior Court by statute, there was a provision enacted by the Legislature which said that the rules in equity already adopted by the Supreme Court in equity should be the rules of the Superior Court in equity, and that statute exists today. Now Mr. McClennen said that when the two courts are exercising concurrent jurisdiction over the same thing the rules ought to be uniform, and therefore that the Supreme Court rules ought to be the rules of the Superior Court. But what do you say about the common law side of the court? The Supreme Court has common law powers and has common law rules of its own. The Superior Court has common law powers and common law rules of its own, but different from those of the Supreme Court. Now if the two courts are to have identically the same rules because they are exercising the same jurisdiction the answer is that they do not. The reason why we think that the Superior Court ought to have power to make its own rules is that the Supreme Court, which originally had all the power in equity, has been gradually whittling it away from itself. Very recently there was a statute passed, with some opposition on the part of the Bar, which allows the Supreme Court to transfer to the Superior Court every equity case. You cannot bring an equity case in the Supreme Court with any assurance that it will stay there. The judge can put it over immediately

into the Superior Court. If the Supreme Court is going to put its cases over to the great trial court to try, why should not the court that tries the cases make the rules which govern the trial there? It seems too idle to say that the Supreme Court, which makes the rules and has that case only long enough to allow it to be entered and transferred to the Superior Court—that the rules of that court are going to follow that case wherever it may be even though the final decree is entered not in the Supreme Court but in the Superior Court. The court does not take equity cases now. A judge may retain them, but I believe very few equity cases in the future will ever be retained in the Supreme Court for trial; they will be transferred to the Superior Court. If that is so, and if the Superior Court is to have all the burden of the case, it seemed to us that the Superior Court, knowing the conditions that exist in its own court, ought to have the power to regulate its own cases, and I see no reason why its rules should be exactly like those of the Supreme Court either. If the Supreme Court wants to have its own rules over equity cases, then let the Supreme Court keep the equity cases that are filed there; but if the Supreme Court transfers to the Superior Court equity cases, I see no reason why the Superior Court should not be made to apply to them.

Mr. Henry E. Bellew.—Mr. President, may I say a few words on the subject of rules, having been equity clerk of the Superior Court for many years. By the revision of 1836 many of the equity rules of the United States Supreme Court were taken by the Supreme Judicial Court, and those rules have continued to be our rules to this day. The present Supreme Court rules would continue to be the rules of the Superior Court if that court was given authority to frame its own rules.

Many occasions have arisen—especially since the abolition of the replication, and also on occasions where speedy hearings were desired on interlocutory matters before special masters—that if the Superior Court had authority to do so, rules might have been drafted to meet the situation which would have expedited business.

As pointed out by Mr. Mansfield, and in accordance with the removal act of 1922, the Superior Court now receives substantially all the equity entries and is the great trial court in equity as fully as it is at law. Meanwhile its rules are those of the Supreme Court, and as it performs the bulk of the equity work it would have a more active interest and greater opportunity in practice to observe the occasion for changes than the Supreme Court with its lessened number of equity suits.

I agree with Mr. McClennen that the present recent revision of the Supreme Court rules is most thorough and excellent. The rules are the result of a century of experience. If the Superior Court had authority to make its own rules, the rules of the Supreme Court would undoubtedly be adopted and it would probably be found that no change in those rules would be necessary for many years, unless it was to meet some special circumstances that arose; but when that circumstance did arise it should find the Superior Court, having exercised its equity jurisdiction for many years, with sufficient authority to make every rule necessary to govern its own procedure as fully as it now has the power to draft rules for the transaction of its common law business.

MR. MCCLENNEN.—I am gathering a suspicion that very likely a majority is not in accord with my view. If my motion is lost it will require another one. If somebody who thinks this statute should be passed will move the approval of this statute, I will accept it as a substitute.

MR. WHITMAN.—Mr. President, I will make that motion.

THE PRESIDENT.—The motion is that this act be approved by the Association. (The motion was put and carried.) It is a vote. Who moves the one in regard to interrogatories now?

MR. WHITMAN.—I make that motion.

THE PRESIDENT.—Mr. Whitman moves that the act relative to Interrogatories in Civil Cases, in Appendix C of the report of the Judicial Council, be approved by the Association.

MR. BAILEY.—Just a word about that. There was a lot of sound common sense in what Mr. McClennen said in opposition to that particular act. In New Hampshire, for years, they have had a practice, just as Mr. McClennen tells us we ought to have here. You summon a trustee and instead of filing interrogatories you get the trustee in and examine him orally, and you get somewhere. We might just as well do something like that in this state. This particular rule will not, I think, do what is wanted as well as something else. I hope it will not be approved.

MR. DRURY.—I have read with some care the act submitted by the Judicial Council. Together with Judge Wait and several others I was one of the authors of the present statute relative to interrogatories, and it is my feeling that this proposed system will be a great improvement on the system which we then devised. As I have observed its working I think it is a step in advance. There are some things about the details of this act which I do not like, but I do

think that the idea of limiting the number of interrogatories is one that ought to prevail. What I would like to see is, to see the number of interrogatories in the first instance limited, and then provide that if any interrogatories are not responsive or if for any reason it is necessary, or if for any other reason in the form or in the substance of the answers to the first set it is necessary to file further interrogatories, that further interrogatories ought to be filed in limited numbers again without even going to the court for leave. I am in favor of the principle; I would like to alter the detail of it. I believe that the filing of such a number of interrogatories as upwards of two thousand is an outrage. I believe that in almost every case too many are filed, and it is because of the dread of evasive and unresponsive answers that they are filed. I think it would be a great mistake for this Association to go on record in opposition to improving the present system. The present system takes an undue amount of time of the equity court; it takes an undue amount of time of the attorneys and it ought to be improved. I therefore move as a substitute, Mr. President, that this Association is in favor of improving this system of interrogatories, but without committing itself to the particular bill proposed by the Judicial Council.

[The motion was seconded.]

MR. STOREY.—I should like to make this suggestion. Mr. McClennen said, and I think Mr. Bailey agreed with him, it would be a good idea if the parties could be summoned into court in advance of the trial and each should have an opportunity to examine the opposing party. If the idea is to relieve the Superior Court of unnecessary labor, I don't think that is going to accomplish it. It is bad enough to discuss the interrogatories, but if the court is to sit in advance of the trial and let one man examine his opponent as long as he likes, the time that would be occupied in that procedure would be a great deal longer.

THE PRESIDENT.—Not in the presence of the judge, as I understood it.

MR. STOREY.—Yes, the suggestion was in the presence of the judge.

MR. MCCLENNEN.—No, Mr. Storey. I understand that these examinations in other States are theoretically in the presence of the court, but practically the court is only asked to view them when occasion arises where there is a controversy. Such examinations are held in counsels' offices repeatedly.

MR. FOX (Lawrence).—If I may venture a few brief words I think the practice is somewhat analogous to a matter that has been worked out in the Poor Debtor procedure. If we were obliged to examine the debtor on written interrogatories it would cause endless confusion. I want to echo the sentiments of the last speaker with reference to the better suitability of an oral examination. I merely want to suggest that there would not be so many interrogatories if it were not necessary to make supposititious conclusions as to what was going to be the answer to previous questions.

THE PRESIDENT.—The motion of Mr. Whitman was that this act as reported by the Judicial Council be approved. Mr. Drury moves to substitute for that a motion that the Association is in favor of improving the system of interrogatories but not in the form recommended by the Judicial Council—

MR. DRURY.—Does not commit itself.

THE PRESIDENT.—But does not commit itself to the form recommended in the act reported by the Judicial Council. The first question is, shall Mr. Drury's motion be substituted for Mr. Whitman's? Those in favor of the substitution will say Aye. Those opposed. [The motion was carried with a few dissenting votes.] It seems to be a vote. Those in favor of the Motion of Mr. Drury will say Aye. [Motion is carried unanimously.] Now if some gentleman will make a motion in regard to some more of these, possibly grouping them.

MR. MCCLENNEN.—There has been no indication of any difference on the others. Tentatively I will move the approval of 9, 10, 11, 12, 13 and 14.

MR. WHITMAN.—Second the motion.

THE PRESIDENT.—It is now moved and seconded that the Association approve the rest of the acts in Appendix C of the report of the Judicial Council.

MR. M. L. SULLIVAN.—May I make an amendment with reference to that, that we approve of 10 in principle only but do not commit ourselves as to the form. That is the statute that appears on page 145, which removes the jurisdictional limit of the District Court and which provides that a man who has a claim for $3,000 in the District Court or $5,000 in the Municipal Court, if he removes his case shall have a trial by jury. If he has a much larger case that involves more money he can remove it without claiming a trial by jury. It seems to me that if that is enacted into law we will have a situation somewhat similar to the situation that existed before, when if a man had a claim in which the ad damnum was $1,000

in the District Court, he had a right to two trials on the fact, but if it was larger he only had one trial, because he would bring this original suit in the Superior Court. Apparently there is some objection to the way that I phrase this statement, because the statute does not exactly say that. It says, however, that where the ad damnum is less than $3,000 in the District Court the defendant may remove only if he wants a trial by jury. But the practical effect of the statute will be that if a defendant wants to remove for any reason whatsoever he will claim a trial by jury and the case will have to be tried by jury if it is removed. I think the statute is correct in principle, but for the reason that I have suggested I suggest an amendment with reference to that statute only.

THE PRESIDENT.—The motion is that Mr. McClennen's motion be amended by leaving out the eleventh act, "An Act Concerning the Jurisdictional Limits of District Court in Civil Cases."

MR. SULLIVAN.—And that that be approved in principle, but that we do not commit ourselves upon the entire act. This is No. 10.

THE PRESIDENT.—I think it is No. 11, is it not?

THE SECRETARY.—Yes, you mean the one on jurisdictional limits, Mr. Sullivan?

MR. SULLIVAN.—Yes.

THE PRESIDENT.—What do you say to the amendment, Mr. McClennen? Do you accept it?

MR. MCCLENNEN.—Yes.

THE PRESIDENT.—The amendment is accepted.

[The motion as amended was unanimously carried.]

MR. WHITMAN.—Now, Mr. President, if it is in order I renew the motion I made in the first place to apply to the votes which we have here passed; that is to say, that the Association take active steps with its members and with the other Bar Associations to bring about the adoption of these statutes.

THE PRESIDENT.—It is moved and seconded that the Association take active steps to enlist the co-operation of its members and also of the County Bar Associations for the promotion and adoption by the next Legislature of those measures which have been approved by the Association.

[The motion was seconded and carried unanimously.]

THE PRESIDENT.—Is there any other business before this meeting? If not, a motion to adjourn is in order.

Upon motion, the meeting was adjourned at 6.40 P. M.

F. W. GRINNELL,
Secretary.

EXTRACTS FROM GOVERNOR FULLER'S MESSAGE ON THE ADMINISTRATION OF JUSTICE.

As the Governor's recent message to the Legislature in so far as it relates to the administration of justice seems likely to prove a state paper of lasting importance, the extracts of special interest to the legal profession are reprinted for convenient reference.

Extracts from the Message.

This is a forum where the traditions of public service are strong. We stand on consecrated ground. In this Commonwealth for two hundred and ninety-one years representatives of the people have been devoting themselves to the service of the community, accomplishing work the full value of which has not always been appreciated until years afterwards. The Commonwealth expects us to do for the future what these men have done for the past and keep Massachusetts in the front rank of the States of the Union in its service to the people, and to this end I ask your co-operation. I congratulate the Legislature upon its prompt despatch of public business during its last session and the wisdom shown in refusing to enact needless legislation.

A first duty of government is to protect its citizens from persons of criminal intent. Among the most important matters, therefore, which I desire to present for your consideration is that of determining what we can do to restore the old time respect for law, and to secure its enforcement. The problem cannot be studied in a day nor solved in a month. Times have changed. The yeggmen and the footpads that bothered us a few years ago are no more. Modern inventions and modern social conditions have changed the entire problem of crime. Huge profits tempt to rum-running. The automobile aids the criminal to commit crime and to escape quickly from the scene. It is difficult for the policeman without a fast automobile or automatic to cope with the bandit who has both.

The law of stage coach days occupies too large a place upon our statute books. It should be replaced by modern legislation which will be capable of handling twentieth century conditions. Misdirected sympathy and the highly developed expertness of penologists, reformers and parole advocates who have lost sight of the rights and protection of the public and concentrated on the rights and reformation of the criminal, have aided to increase crime.

Prompt, vigorous and effective prosecution would speedily make crime less prevalent. Apprehension of the criminal must be certain; prosecution must be inevitable; and adequate punishment must promptly follow if the criminal law is to be restored to the respect of the people and made effective for their protection. There is law enough on the statute books of Massachusetts to enable any judge to convict wrongdoers. Crime flourishes not because of lack of law. The trouble lies deeper than that. The doctrine has been preached far and wide that when a crime is committed the thing to do is to try to reform the wrongdoer rather than to inflict punishment for the crime. It is punishment for the crime—swift and sure—that is the best protection for society. If during that process reform takes place, well and good, and I believe it is more likely to take place under those conditions than through coddling and sympathy. Another factor that interferes with swift and sure justice is the difficulty the courts have to find juries that convict. That same sympathetic consideration for the man in the prisoner's dock that the intellectuals have advocated, through penology and psychiatry, makes it very difficult for the district attorney to secure convictions.

The proper disposition of all criminal cases depends on a full and complete knowledge of the history of the criminal. Such information is now available, and I recommend a more general use by our courts of the information in the possession of our probation commission, whose duty it is to serve them.

I now call your attention to specific recommendations which I have thought over for many months and which I feel confident will materially aid in reducing crime, although, of course, no law or group of laws will eliminate crime, for crime cannot be done away with by merely putting words on a piece of paper. I recommend for your consideration and adoption:

Changes in Criminal Law.

First—That the laws authorizing the release of prisoners by county officials be repealed.

Second—That parole be given to no criminal after a second conviction of felony or crime of violence.

Third—That the minimum penalty be measurably increased for violation of the statute of the General Laws (Chapter 90, Section 24) covering the misappropriation of vehicles.

Fourth—That the governor, with the advice and consent of the Council, be given the authority to suspend at any time the operation

of the parole law, in so far as it deals with the release of convicted prisoners.

Fifth—That proper provision be made to give precedence in our courts to the trial of those accused of crimes of violence. I am requesting the Judicial Council to furnish suggestions as to the best methods to bring this about.

Sixth—That all authority to carry revolvers, automatics or pistols be revoked and new permits granted only for sufficient cause.

Seventh—That a jail sentence be imposed upon any one convicted of carrying a concealed weapon without a permit and that such person be not permitted nominal bail.

Eighth—(a) That a person accused before a Municipal or District Court be required to choose before trial in that court between a trial without jury in the lower court and a trial by jury in the Superior Court, and that if he chooses a jury trial the proceedings be immediately transferred to the Superior Court.

(b) That a person accused of crime in the Superior Court be permitted to waive jury trial.

Instead of restricting the powers and duties of the judiciary, I would enlarge and extend both so as to make the judiciary more effective and better able to accomplish that duty which is particularly theirs to perform. The day has gone by when the justice of the court should be a mere moderator or referee between lawyers. He should guide and control the inquiry. It is he who "should conduct the inquiry past all shams, straight to the heart of the question:—Is the defendant innocent or guilty?" I should like to see our courts adopt the English system of trial of causes.

In making these suggestions I am aware there is much which legislation cannot accomplish.

The parents of our Commonwealth have a supreme duty to perform in this question of crime and its prevention. Some of the causes are deep-rooted—none, however, are so fraught with sure and disastrous results as the neglect of right teaching and discipline in the home. The undisciplined and unguarded child of today is too often the young criminal of tomorrow.

It is well to remember that while law enforcement by officials should be prosecuted vigorously, law observance by citizens generally is also necessary.

The Judicial Council, an unpaid commission composed of eminent and public-spirited citizens, has submitted to me as governor its report containing the results of much investigation and

deliberation by its members. I have transmitted it to you for consideration, and I urge you to give to it the careful study that it unquestionably merits. We should utilize the work of this commission.

Control of Night Clubs.

Closely associated with a genuine desire for more respect for law are the problems of the road houses which have become prominent because of the advent of motor transportation and the activity of the bootlegger. This means of public entertainment is one that requires more supervision. I recommend that the commissioner of public safety, his deputies and officers be authorized to enter upon the premises licensed by local authority.

No one can seriously pretend that night clubs fill any essential demand of community life. I therefore recommend that night clubs, so-called, be licensed by local authority, whether or not they have received a charter for corporate purposes from the Commonwealth. I further recommend that such licenses be not granted except upon the approval of the mayor, City Council and the chief police official of cities and the corresponding authorities in towns.

State Police.

Simple justice demands that I commend the efficient work of the State police in the suppression of crime. In our State police I believe we have a highly disciplined, well trained and dependable force, at all times alert in the protection of the public. The record of the State police speaks for itself.

There appears to be sufficient law requiring clerks of courts to keep proper accounts of all funds intrusted to them, but apparently there is no penalty for the non-observance of this law. I accordingly recommend the passage of legislation providing for an adequate penalty and removal from office for failure to comply with the law.

Useless Oaths.

During the past year the governor and council have made careful inquiry concerning the rapid increase in justices of the peace and notaries public, now approximately 35,000 in number throughout the Commonwealth. The growing tendency to exact sworn statements on the least pretext has reached such proportions that the oath, if taken at all, is largely perfunctory and frequently void of any essential meaning. I suggest the elimination of many useless oaths and certificates now required. The attorney general

has made a careful inquiry covering this subject and has suggested remedial legislation to which I urge your consideration.

Workmen's Compensation.

Under the Workmen's Compensation Law as it stands at present the right of a parent to receive compensation for the death of a minor child is dependent upon and varies with the amount of money which is actually being contributed to the parents by the minor at the time of his injury. I recommend an amendment of the law providing that in the case of the death from injury of a child in industry under the age of eighteen years total dependency shall be presumed to exist.

Whatever may be said as to the immediate help that the parents are getting from a minor child, the future possibilities are such that the parents suffer from his death not only the loss of their child but also the probabilities of future financial assistance, and for this financial loss compensation can and should be provided.

Probate Court Fees.

There should be established a system of fees for the filing and allowance of petitions and other papers in the probate courts of the Commonwealth. The cost of these courts to the Commonwealth has increased from $162,741 in 1910 to $357,445 in 1925. The general taxpayer should be relieved of this special tax and adequate charges made for services rendered to those receiving that service. Probate court fees are generally charged in the various States of the Union. If it is equitable and proper to charge fees in the other courts of the Commonwealth, it is equally so in the probate courts.

The Legislature may well consider at the same time the question of increasing other legal fees and charges so as to more nearly meet the cost that is now borne by the general taxpayer.

Repeal of Legislation.

In my Inaugural Address of a year ago there appears the statement—"I believe in economy of legislation." To that statement I would add—"I believe in the abandonment or repeal of unnecessary laws to the end that we may have a simplification of the laws of the Commonwealth." Laws that are unnecessary, archaic or not essential should be repealed. Multiplicity of laws complicates and makes increasingly difficult the administration of justice and makes for disrespect for all law. I recommend that an unpaid commission be appointed to consider this important subject.

Legislators as Counsel Before Boards and Commissions.

There has been criticism of members of the Legislature appearing before various boards and commissions of the Commonwealth as paid counsel, and I strongly recommend that such practice be discontinued by appropriate legislation. The Federal Government by statute prohibits members of Congress from such practice, and it is an example that we should promptly follow.

A Letter Commenting on Parts of the Governor's Message.

(From the Boston Herald.)

To the Editor of The Herald:

Mr. Fuller is one of the best governors we have had. He has concreteness of mind, incisiveness and, above all, courage. In his program for preventing crime he is hitting at or near the centre of the problem—or perhaps I should say near one of its foci—in recommending the lodging of greater discretion with the judges and a more active control of judicial proceedings on their part.

His recommendations limiting the application of the parole system do not seem so wise. The result is apt to be the shortening of the original sentence and the turning loose of the prisoner upon society without the supervision, or the power to return him to prison in case of misbehavior, which the parole system provides.

It is not the reformers or the psychiatrists who have permitted the mentally defective criminals—a large proportion of the whole number—to remain at large. It is they, on the contrary, who have long, and at last successfully, worked to get some of them permanently locked up. It was as the result of a psychiatric examination made in pursuance of the law secured for such purpose by the reformers that the state department of mental diseases reported last March in the case of Charles Roper that he was a menace to the community, needing discipline and habit-training; that it was a question whether or not he could ever make good in the community, and that he should be committed to an institution for psychopathic delinquents. It was after his release, in spite of this report, that he promptly committed his last and most notorious offense, as a result of which, and upon the recommendation of two distinguished psychiatrists, he was committed to what is probably permanent segregation as a defective delinquent. Many other criminals who would otherwise still be operating upon society, with occasional brief terms of enforced seclusion, are at this moment, owing to

similar recommendations from the psychiatrists, permanently out of circulation.

The finding out of what is really the matter with the criminal and treating him in such a way as, if possible, to cure the trouble while not lessening his punishment, and if cure is impossible, the permanent prevention of the results of his ailment from being visited upon society at large, is neither a coddling of the criminal or a menace to the general public.

As to the soft-hearted jury, it is the despair of the reformer, not his ally. Moreover, the reform majority upon our juries, as in the general community, has thus far not been large.

Boston, Jan. 7. JOSEPH LEE.

The foregoing letter is reprinted because it presents briefly the ideas of the supporters of the parole system, which is again discussed by the Commissioner of Corrections, Mr. Bates, in a statement in the Herald of January 18th as follows:

> "As to the matter of parole, our chief concern should be to see that while abuses of the system are controlled, the added protection given the public by a release under supervision should not be entirely removed or interfered with by too drastic action, and that we should not be obliged to go back to the days of homes for ex-convicts, riots in the prison, and the presence of so many dangerous, unsupervised recidivists in the community.
>
> "The penologist today demands not shorter sentences, but longer, not idleness but the teaching of a trade, not favoritism but a merit system leading toward parole, not sympathy but justice, not pampering but a scientific stern and unflinching program of reformation.
>
> "Punishment is as necessary in a complex civilization as our laws themselves. The presence of the insane, the feeble-minded, the extreme youth, the epileptic, the drug addict and the confirmed inebriate, however, in our criminal class requires careful adjustment as to treatment. Penology would, nevertheless, protect society from such classes, not through punishment alone perhaps, but by more effective permanent segregation."

Note.

Whatever may be the merits of the parole system and however men may agree or disagree with the recommendations about it, there is little doubt that Governor Fuller reflects a strong public sentiment in favor of some stiffening of its administration. Every movement of a humanitarian character lends itself easily to exaggeration and there has been so much extreme sentimentalism in

regard to all kinds of offenders of which the Loeb-Leopold case and the wholesale jail deliveries by the governor of a Southern State are the most striking recent examples that it is time to pause and think about what is going on.

The point of Mr. Lee's letter is that men who show some chance of reforming but who need supervision, get it for a longer period under the parole system; that judges may properly consider this fact and impose longer sentences with the expectation that the prisoner will be paroled after a time, but will be kept under supervision during the whole period of the sentence with the chance of being returned to confinement if he violates his parole and thus will have a longer supervised chance to develop the habit of behaving himself. Some men think that a judge has no business to consider this—that his function is to impose a sentence without regard to the chances of parole. But is that view sound? If the parole system is worth having at all so that we provide for it, should the judge ignore it when considering the difficult problem of what to do with a prisoner? This, as we understand it, is one of the questions presented by Mr. Lee and others.

The governor has not suggested abolishing parole. After all parole is a regulated system of the purely executive function of clemency by the government of which the governor is the responsible executive head. This being so, why should not the governor be given the power to suspend the operation of the parole law just as he has control over the exercise of the pardoning power of which parole is a subsidiary branch? Such an arrangement would be no disparagement of the parole board.

As to paroling by county officials, most men that we have talked with never knew that such power existed and have been generally of opinion that the power should be taken away even though it applies only to minor offenses.

As to the paroling of second offenders we are uncertain how often this happens, or is justified, but, even if it should not be prohibited, it might, at least, require the approval of the governor.

Extended inquiry into the "permanent results of probation" was made by the Probation Commission in 1923-4 and their report was printed as Senate 431 of 1924 (copies in MASS. LAW QUART. for July, 1924). Perhaps a commission to report the facts as to the practical results of the parole system would be wise before going far in the process of clipping its wings.

F. W. G.

HENRY N. SHELDON

(Reprinted from Boston Transcript of January 18, 1926.)

One of the most scholarly lawyers and strongest characters on the Massachusetts bench, Judge Henry N. Sheldon was a man who passed the stern tests of intellect and character in the minds of his brethren at the bar. To the younger lawyers who did not know him he is already a figure of the past, but to those who worked with him, or before him, his memory will always be a living inspiration. The Commonwealth has had no higher standards of service than those which he exhibited. Governor Greenhalge appointed him to the Superior Court because he knew his man, and in these days, when men talk glibly about electing judges by popular vote, it is well to remember that Judge Sheldon was one of those modest, unassertive men who would never have appeared on our bench except under our system of appointment by the governor and council. An elective system would prevent the people of Massachusetts from securing the services of such men as judges, because their lack of the things which might appeal to voters and their distaste for a personal campaign for such a position would either prevent their becoming candidates or, if they were willing, would in most cases prevent their election. Let us hope that Massachusetts will never adopt a system which will shut the gates of opportunity for judicial service on men like Judge Sheldon.

F. W. GRINNELL.

Note.

A good portrait of him will be found in the "Quarterly" for November, 1920.

For those readers who are not familiar with Judge Sheldon's career and his connection with this magazine, the following statement will give the outline.

He died on January 14, 1926, at the age of 83. Born in Waterville, Maine, in 1843, he was successively first scholar in the Harvard class of 1863, school teacher, soldier in the Civil War, practising lawyer, a justice of the Superior Court from 1894-1905. Chairman of the Commission to Simplify Criminal Pleadings 1899, Associate Justice of the Supreme Judicial Court from 1905 to 1915, president of the Massachusetts Bar Association 1915-1916, Chairman of the Judicature Commission 1919-21.

It was largely as a result of the encouragement and support given by Judge Sheldon when he became president of the Massachusetts Bar Association in 1915, that the experiment of the MASSACHUSETTS LAW QUARTERLY was begun in November of that year and he continued to serve as a member of the Publication Committee of the magazine until the fall of 1921. As stated in the QUARTERLY for May, 1922 (p. 41) the Editor will always remember the conference in Judge Sheldon's room in the winter of 1916, with Judge Hammond walking up and down with his hands behind his back, while the policy, standards and general plan for the magazine were being discussed.

PROPOSED CONSTITUTIONAL AMENDMENT FOR OLD AGE PENSIONS.

Proposal for a Legislative Amendment of the Constitution authorizing the General Court to establish a System of Non-Contributory Old Age Pensions. (Senate Doc. No. 4.)

ARTICLE OF AMENDMENT.

The general court shall have the power to establish systems of non-contributory old age pensions and may require that the cost of any such system shall be borne in whole or in part by the commonwealth of any civil division thereof. The general court may make provisions for the acceptance and use of contributions from private sources to said fund and system.

REMARKS OF RICHARD W. HALE, ESQ., AT BENCH AND BAR NIGHT UPON THE HISTORY OF THE STATUTE FORBIDDING JUDGES TO CHARGE UPON THE FACTS.

We are proud to think that our judges still have their courage with them, that they take an adequate part in the trial of a case, that they lead the jury in the right direction, and merit the responsibility which they assume. We are proud of the well-organized way in which they do their trial business in our great Superior Court, extending throughout the state, but we observe that they are not allowed to help the jury upon any question of fact—when they *charge*. We go down street into our Federal Courts and see there judges helping the jury wisely, though with caution. Our experience there does not set parties, juries, witnesses, or counsel in opposition against the judge or against this privilege. I think it is universally true, about those of us who have practical experience in trying cases with juries before Federal judges charging on the facts, that we feel that we get better justice, and that we have no criticism to make of the existence or exercise of this power.

Why did the judges of the Massachusetts courts lose it, and is it an accident that they lost it substantially at the same time that our Court of Common Pleas was abolished and the Superior Court established?

I'll come back to that question. But first I'll tell the story of a criminal trial with a jury at Lowell. Ebenezer Rockwood Hoar was on the bench. The defendant was the editor of a Lowell newspaper indicted for criminal libel. The libel was in the words following:

It had a headline and the headline was:

"BEN BUTLER

"This notorious demagogue and political scoundrel, having swilled three or four extra glasses of liquor, spread himself at whole length in the City Hall last night. . . . The only wonder is that a character so foolish, so grovelling and obscene, can for a moment be admitted into decent society anywhere out of the pale of prostitutes."

Ebenezer Rockwood Hoar charged the jury that the government was bound to prove beyond a doubt that this article was intended for Ben Butler, whose name was Benjamin F. Butler, and,

having a right to express his opinion upon the facts, and, being a Whig and a conservative when Butler was a radical, went on to say:

> "I am at a loss to see that there is any evidence upon this point to make it sufficient. There is nothing except the article itself to prove to whom it applies."

and the jury acquitted. "Butler's Book" 108-9.

Of this miscarriage of justice, Butler says:

> "I believe I have one characteristic, and that is of paying my debts. I have fully done so, I think, in this case. This particular judge, while attorney-general under President Grant, got himself nominated to be Associate Justice of the Supreme Court, but I caused him to be rejected by the Senate; and when in 1876 he offered himself as a candidate for Congress against me, I published an open letter describing him so exactly, both morally and politically, that there could be no doubt of his identity (nor was the description libellous), and I beat him so that all the votes he got would be hardly sufficient for mile-stones in our district." "Butler's Book" 109.

Twenty-five years farther on in his autobiography, Butler again describes these two incidents. Of the nomination to the Supreme Court of the United States, he says that he "caused it to be rejected by the Senate"—"for reasons affected by public policy and private wishes". "Butler's Book" 925.

Of the letter written in the campaign of 1876 he says:

> "I regret I cannot spare the space to reproduce it here as an exhibit of what can be done to a political opponent when a man of resources sets himself earnestly at work to do it." "Butler's Book" page 926.

Now I observe that near the climax of the invective in that memorable bit of what Butler himself calls "slang-whanging", he charges Hoar with being the man who used to charge the juries so hard upon the facts.

I found this story in Butler's autobiography, when I was looking for verification of the rumor that it was he who changed the law about charging juries on the facts. I saw how it might have set Butler thinking, but I have not yet been able to prove connection between the two things. I do not conclude that Hoar was innocent. Indeed I suspect that he was the effective cause of Butler's later action. My verdict is "not proven".

Ten years later came our General Statutes, in which the section about charging on the facts makes its first appearance. It has a curious history. The Commissioners reported their revision, then

the Special Committee of the Legislature sat to complete it. Without any previous warning this section emerged in the report of the Legislative Committee. Ben Butler was a member of that Committee.

Now during the time that I was making search for further information and trying to get the true story about this statute, I had the pleasure of dining with Mr. Justice Oliver Wendell Holmes.

I inquired of him what he knew about the story. Said he:

> "Oh, yes, I remember I myself asked Ben Butler about that. He and another member of that Committee did it. They were fed up with the way that Mr. Justice ——— of the Common Pleas Court interfered with the functioning of a jury and angered counsel and clients by his petty assumption of authority. Thereupon, being on that committee for revision, they ran the thing through."

As to the credit for founding the Superior Court, Butler says:

> "In 1858 I was elected to the Senate of Massachusetts by the citizens of Lowell. . . . In that Legislature I drew the bill reforming the Judiciary of the State, so far as it could constitutionally be done, the Supreme Judicial Court being placed out of reach of reform by the provisions of the Constitution. The Court of Common Pleas, substantially the trial court of the people's causes, was abolished and a new Court established upon a basis upon which it remains today." "Butler's Book" 123.

That was a great improvement wisely carried out. And Mr. Justice ——— disappeared with the abolition of the Court of Common Pleas, not being one of the justices who were reappointed to the Superior Court.

(Note by Mr. Hale.) When I sat down, after delivering this speech, Mr. Justice Henry K. Braley, who was sitting on my right, at once said to me:

> "Mr. Hale, you have given us a substantially accurate account. I too sat in Lowell. I too went to dine with Butler, and he told me the story substantially as you have told it here tonight. He talked of Hoar and the libel suit, but the primary thing was Mr. Justice ———."

A PARABLE.

(Reprinted from W. G. Sumner's "The Challenge of Facts and Other Essays", p. 105.)

A certain respectable man had three sons, who grew up, lived, and died in the same city.

The oldest one turned his back at an early age on study. Being eager to earn something at once, he obtained employment driving a grocer's delivery wagon. He never acquired a trade, but was a teamster or driver all his life. In his youth he spent all his spare time with idle companions and devoted his earnings to beer, tobacco, and amusement. At twenty-two he fell in love and married. He had six children who scrambled part way through the public grammar school after a negligent fashion, but cost as much money and more of the teachers' time than if they had been regular and studious. This son never earned over two dollars a day except on election day, when he earned five or more, according to circumstances. He never had ten dollars in his possession over and above his debts.

The second son was the scholar of the family. By energy, perseverance, and self-denial he managed to get a professional education. He married at thirty, being in the receipt of an adequate income from his profession, but not yet having accumulated any capital. He had three children who were all educated in the public grammar and high schools, and his son went to the university, which was a state institution supported by taxation. His wife had strong social ambition, and, although he had early trained himself in habits of frugality and prudence, he found himself forced to enlarge his expenditures quite as rapidly as his income increased; so that, although he earned at last several thousand dollars a year, he left no property when he died.

The third son had no taste for professional study, but he had good sense and industry. He was apprenticed to a carpenter. He spent his leisure time in reading and formed no expensive habits. As soon as he began to receive wages he began to save. On account of his care, diligence, and good behaviour, he was made an underforeman. The highest earnings he ever obtained were $1,500 per year. At thirty years of age he had saved $2,000. He then married. He invested his savings in a homestead, but was obliged to incur a debt which it took him years of patient struggle to pay. He had three children who went through the public grammar school, but he was not able to support them through the high school and college.

When he died he left the homestead clear of debt and nothing more.

The oldest son never paid a cent of local or direct tax in his life. The second son never paid any. The third paid taxes from the time he was twenty-two, when he first began to save, and while the mortgage rested on his homestead, he paid taxes on his debt as well as on his property. The taxes which he paid went to pay for police, lights, sewers, public schools, public charity, state university, public prison, public park, and public library, and also for soldiers' monuments, public celebrations, and all forms of occasional public expenditure. His brothers and his brothers' children all enjoyed these things as much as, or, as we have seen, more than he and his children.

The oldest brother borrowed constantly of the two others, and he and his children availed themselves freely of the privileges of relationship. Inasmuch as the second brother, in spite of his large income, was constantly in pecuniary straits, it was the youngest who was the largest creditor of the oldest. The oldest was an earnest greenbacker with socialistic tendencies, and the only payment he ever made to the youngest was in the way of lectures on the crimes of capital, the meanness of capitalists, and the equality of all men. The oldest died first. Two of his children were still small and the older ones were a cause of anxiety to their relatives on account of careless habits and unformed character. The second son, or to be more accurate, his wife, would not, for social reasons, take charge of the orphans, and they fell to the care of the youngest brother, although the second, while he lived, contributed to their maintenance.

The neighbors differed greatly in their views of this family. Some called the oldest poor and the other two rich. Some called the two oldest poor and the other rich. Some called the oldest and youngest poor and the second rich. As the facts were all known throughout the neighborhood, it was found to be a very interesting and inexhaustible subject to debate. Some people compared the first and second moralized on the inequality of the distribution of wealth—one living in poverty and the other in luxury. This state of things was generally regarded as very "unjust" to the oldest brother. He was fond of demonstrating that it was so to anyone who would listen. Nobody ever was known to refer to the youngest brother as the victim of any injustice. The oldest brother was liked and pitied by everybody. The second was very popular in his circle. The third was not very well known and was not popular with anybody.

Extracts from Public Document No. 12

REPORT OF

ATTORNEY GENERAL BENTON

For the

Year ending November 30, 1925

The Administration of Criminal Justice in Massachusetts.

The increase in crime, and particularly in crimes of violence, in recent years has acutely focused public attention upon the "crime wave," its causes and the probable remedy therefor. This most important public question is not local in character, is not confined to Massachusetts, but is country-wide. One of the leading authorities on this subject has stated that we have had in the last three or four years the most sustained and vigorous challenging of our system of administering criminal justice that has ever occurred in this country. This challenge must be met.

The paramount duty of every civilized State is the protection of society. If that fails, all fails. It should be realized, however, that the commission of crime cannot be completely suppressed, even in the most perfect society and under the most improved laws and administration, but it can be greatly reduced, and the efforts of the State should be directed toward reducing the commission of crime to the lowest possible degree. It should be further realized that the mere enactment of laws will not in and of itself reduce crime. Laws are not self-enforcing. The human equation appearing in the administration of laws is the most important factor.

Too many people believe that the remedy for any evil is the passage of a law, neglecting altogether the vital fact that a law which is not carefully considered and which does not fit properly into the general machinery of the administration of justice may bring far greater evils in its wake than the specific evil which it is designed to remedy.

It is therefore of the utmost importance that hysteria should not be the basis of, nor be allowed to control, new legislation. The time demands clear thinking, unencumbered by passion, an actual knowledge of the facts, and a proper appreciation of all of the factors which enter into the whole situation. The convict should not be coddled or petted. He should not be treated as, or made to feel as if he were, the favored guest of the household. On the other hand, we should beware of turning back to the barbaric age. The pendulum must not be permitted to swing to either extreme, always remembering that the protection of society as a whole is the desired end.

Too frequently some of the numerous factors which obtain in the crime problem are lost sight of. In endeavoring to suppress or reduce crime we must seek the causes of crime and endeavor to strike at the roots. The various factors, as I see them, are:

1. The home problem.
2. The apprehension of the criminal.
3. The legal procedure with respect to trial and conviction.
4. The attitude of the public toward the accused.
5. The punishment of the criminal.
6. The attitude of the administrators of criminal justice.

These factors are all interdependent, are all part of one piece of machinery, and a breakdown with respect to any one of them seriously hampers society in its efforts to suppress crime.

The Home Problem.

The suppression of crime must start with the proper care of the child. A better home life, a proper environment, a correct training, a kind appreciation of the child's problems, a sympathetic but firm supervision over the child's habits and companions, would serve to strike at the very roots of the creation of criminals. The obligations with respect to these things are manifestly squarely on the shoulders of the respective parents. Legislation can be of little practical help. The schools obviously can be, and are, of great assistance, but they have charge of the child for only a small portion of its daily life. They cannot control its outside activities. A child cannot be expected, if it be permitted to run wild without adequate parental control, to grow up into a law-abiding citizen. If a child is allowed to roam the streets at will, to choose its companions and playfellows indiscriminately, to become part of the street-corner gang, and to imbibe freely of the practices and habits of the more vicious elements in the street, is it to be wondered at that such child grows up to be a gangster and criminal? The duty of parents with respect to the care of their children is clear. In the failure of parents vigorously to exercise that duty lies the first weak link in the chain. An aroused understanding on the part of parents with respect to their obligations would materially aid in the solution of the criminal problem.

The Apprehension of the Criminal.

If persons who commit crime are not apprehended swiftly on the heels of their crimes, criminal justice must fail. The police are the first line of defense against the criminal. Quick and certain apprehension is the first step in deterring the commission of crime. If criminals are not apprehended, crime will, as a matter of course,

flourish. An adequately large police force is, therefore, of vital necessity. The men on the force must be of unquestioned honesty and integrity, and should be properly trained to cope with the situation they are required to meet.

The police forces of the various municipalities should be properly co-ordinated and vigorously supervised. Why longer delay unifying the police departments of the cities and towns that make up metropolitan Boston? Here we have one of the large metropolitan cities of the world, with a population of nearly two million people, policed by forty separate and distinct police forces. Why not lead, and not follow, other great cities in installing a radio system as an important aid to the police in the capture of criminals? The installation of a central broadcasting station and sufficient receiving stations, solely for police use, which would be ready any minute of the day or night, would mean that the police alarm could be broadcast immediately all over the State, the fleeing criminals more effectively followed, and, so far as metropolitan Boston is concerned, all the exits from the city guarded almost at once.

Co-operation with police agencies throughout the country should be achieved. The records of criminals should be carefully compiled and made available through some central agency to all of the authorities engaged in the administration of criminal justice.

Legal Procedure with Respect to Trial and Conviction.

The next step after apprehension of the criminal should be his trial and conviction. Important as it is that the criminal be speedily caught, it is equally of vital importance that the trial and conviction should speedily follow. Delay in bringing him to trial means the disappearance of witnesses, at times a change of testimony on their part due to sinister influences, an actual or pretended loss of memory, and loss of interest on the part of witnesses. Delay usually favors the criminal. Also, and this is of perhaps equal importance, punishment cannot be a sure deterrent to potential criminals unless it follows so closely on the heels of the crime as to make its impression while the crime itself is still fresh in the minds of the public. Otherwise, the crime remains in the public mind as an unpunished one, even though at some later and unrelated date adequate punishment is actually imposed. The failure to bring the criminal to speedy trial and punishment actually induces the commission of other crimes, because of the feeling that in the long run crime goes unpunished.

Under our system a defect in the form of an indictment may mean long, legal battles before or during trial, and may result in the discharge of the defendant, regardless of his guilt, thus necessitating the return of a new indictment. This needlessly involves expense and delay, may mean the defeat of justice, may prevent the conviction and punishment from acting as a deterrent, and does tend to bring the administration of justice into disrepute. There seems to be no valid reason for not empowering the court to allow the prosecuting officer at any time to amend the indictment as to matters of form which do not prejudice the defendant. I accordingly recommend legislation to this effect. In addition, in my opinion legislation should be enacted to the effect that mere errors of form should neither invalidate an indictment nor be grounds for the defendant's discharge.

In the Federal courts and in England it is competent for the court to comment upon the evidence and to express an opinion thereon. The court's view as to the evidence is not binding upon the jury but is merely advisory. This right of the court has operated in a very satisfactory manner and has been of great assistance to the jury. It has enabled the jury to get a clearer view of the case and better to comprehend the law applicable to the situation as laid down by the court. I recommend that careful study be given to the question of the advisability of legislation giving the court such right in this State.

After a conviction has been obtained the judgment should not be reversed unless there has been substantial harmful error. I recommend the enactment of legislation to the effect that the conviction should not be set aside for errors of form or for any other reason except substantial error which tended to prejudice the defendant.

The Attitude of the Public Toward the Accused.

Even though the machinery of the law moves quickly and effectively in apprehending the criminal and placing him on trial, its work is set at naught if the general public, as represented in the jury box, will not convict the guilty. The public too often stands in a position of utter indifference toward convicting those who have committed crime. Too often it is stirred by sympathy for both the admitted and convicted criminal. Too often it forgets its duties to itself, the duty to protect society against criminals, and looks upon the trial of a criminal case as a game with which it is not concerned but in which it is merely a curious or interested spectator. And with that attitude and in that frame of mind it too often looks upon the defendant as an

under-dog who is pitted in an unequal contest against a powerful adversary, the prosecuting officer, and as a consequence is full of open sympathy for the defendant and hopes for his acquittal. This attitude is necessarily reflected in the jury box, which is merely a cross section of the general public.

Too many men attempt to dodge jury service to avoid personal inconvenience. They do not desire to see justice thwarted by failure to secure proper juries; they do not even desire to have men freely excused from jury service for personal business reasons. Perhaps they even condemn the practice of dodging jury duty. And yet, when they themselves are summoned for jury service, and it is inconvenient for them to serve, they resort to every artifice and device to evade the duty. They regard themselves as isolated cases. They fail to realize that there is nothing unique about their cases, that they are merely individual units in large masses of so-called good citizens, desiring to see a proper administration of criminal law but insisting that they be excused and that some one else carry the burden. They fail to realize that, if the better citizenry of the Commonwealth succeeds in evading jury duty, juries will necessarily be composed entirely of the inferior elements in the community, with disastrous effects upon criminal justice. A man cannot regard himself as a good, law-abiding citizen and evade the call to jury service. When he attempts to dodge jury duty solely for purposes of personal convenience he unwittingly allies himself with the forces of evil.

The attitude of some newspapers, at times, in publishing articles about certain criminals in such a manner as to give the impression that the criminals are heroes and that they are worthy of admiration and perhaps emulation, or that they are helpless, persecuted individuals who are without fault for their present situation and to whom all sympathy and assistance should be given, is another factor in turning public sympathy away from the protection of society and centering it upon the guilty. Newspapers, like other good citizens, do not deliberately seek to hamper or defeat justice; but at times unthinkingly, and at times unwittingly, for news effect, they so glorify the criminals as almost to idealize crime itself. The resultant effect is frequently disastrous to the cause of criminal justice. The newspapers stand in a position of public trust. Their duty to the public and to society is clear. They should be true to that duty.

No legislation can deal with this situation. What is needed is an aroused public conscience as to its duties, an understanding on the

part of the public that a criminal trial is not a game conducted for its entertainment or amusement, but a step toward making society a safe place to live in, and an appreciation by the public that unless it, acting through the jury, abandons the policy of misplaced sympathy and convicts the guilty, criminal justice must fail, crime will enormously increase, and the public, not the criminal, will pay the penalty. There can be no effective criminal justice without the support of the public.

The Punishment of the Criminal.

After the trial and conviction of the criminal, punishment should be speedy, certain and adequate. That alone can effectively deter the commission of crime. A smaller penalty imposed and carried into effect while the crime is still fresh in the public mind is of far greater value as a deterrent than a greater penalty imposed or carried into effect when the crime and the very existence of the criminal has been blotted out of the public mind by other happenings. Delay between the time of conviction and the carrying of the sentence into effect should be reduced to a minimum. The courts have ample power in most cases to effect this result. They should use it.

Too frequently there is groundless delay between the time of imposing the sentence and carrying the sentence into effect. Where the defendant has real questions for the consideration of the Supreme Judicial Court it is proper that the execution of the sentence be stayed pending the determination of the questions raised by him. Frequently, however, his exceptions are wholly without merit or frivolous, and it is a foregone conclusion that such exceptions will be dismissed and the conviction sustained. In such cases it is a miscarriage of justice, a hampering of the administration of criminal law, and perhaps even an inducement to the commission of crime, to stay the execution of sentence. No further legislation appears to be necessary to remedy this situation. G. L., c. 279, § 4, provides that sentence shall be imposed upon conviction of a crime, except in capital cases, although exceptions have been alleged or an appeal taken, and that the execution of the sentence be not stayed unless the court files a certificate that there is reasonable doubt whether the judgment should stand. Too frequently such certificate is filed as a matter of course, although the court is not in doubt. This provision of law should be literally enforced by the courts. The execution of sentence should never be stayed unless the court *actually* has a reasonable doubt whether the judgment should stand.

THE ATTITUDE OF THE ADMINISTRATORS OF CRIMINAL JUSTICE.

Under this head I include police, prosecuting officers, judges, and probation, parole, commutation and pardon authorities. I have referred at length to the required attitude of the first three authorities. All should be imbued and should act with an eye singly to the public welfare and the protection of society. This applies with especial emphasis to the probation, parole, commutation and pardon authorities. They should always subordinate the welfare of the individual convict to the welfare of society as a whole. In determining whether a convict should be released prior to the expiration of his sentence the sole test should be whether it is to the interest of society that he be released, and such release should not be granted unless the answer to that question is in the affirmative.

In striving to eradicate one evil we must be careful not to create other greater evils. Spasmodic, offhand or hysterical legislation may bring greater evils in its wake than those such legislation may be designed to cure. All new legislation must be made to fit into the intricate background of established law. Existing institutions should not be lightly scrapped unless and until we are satisfied that they are no longer useful. Features in our legal or administrative machinery of recognized strength and worth should not be destroyed to make room for provisions of doubtful and untried value. Judicial power and judicial discretion cannot be arbitrarily cut down without a wholly bad effect on the administration of justice. The hands of the court should not be bound unless and until the Legislature, after careful study and mature deliberation, feels that such action is essential.

I have endeavored above to outline some of the factors and problems involved in the administration of criminal justice. I now desire to call your attention expressly to the following matter:

It appearing in the newspapers from time to time that the Registrar of Motor Vehicles had information about certain criminal cases, which he alleged had not been properly disposed of, the Registrar, on December 7 last, was asked to furnish specific cases, in which, in his opinion, there had been miscarriages of justice. On the following day a similar request was made to the Police Commissioner of the city of Boston. The cases presented now total nearly four hundred. An intensive investigation is being made into each case to determine the actual facts with respect to the charges as to deficiencies in our criminal laws and in their administration. This work is being expedited,

and as soon as completed will be embodied in a special report to the Legislature, with recommendations for such legislation as is thought to be immediately necessary in the situation, and to point out such other remedial action as is needed to diminish crime and to improve the administration of criminal justice.

On November 21 last, a conference was called of the District Attorneys, at which were considered proposed recommendations to be made to the General Court for changes in the criminal law. These recommendations will be included in the special report referred to above.

In bringing this part of my annual report to a close, I think it is of importance to point out that a scientific study of the situation from every angle has not as yet been made. There has been no continuing body to follow closely and investigate the administration of criminal justice. We have been content to deal with individual phases of the whole problem without the aid of all of the facts. The dean of one of the leading law schools in the country, referring to the crime problem, said recently:

> There is very little exact information available. . . . The most important thing just now is to ascertain the facts. Very little of what is said and written on this subject has any sure foundation in exact knowledge of the facts. Perhaps the first step toward something better would be adequate provision for research.

I recommend that the Legislature, after enacting such acts as it deems necessary to meet the present situation, give careful consideration to the advisability of establishing a commission to make a survey of criminal justice in the Commonwealth, to study the causes of crime and factors in the administration of criminal justice, and to make recommendations based on scientifically ascertained facts. Such a commission should not consist entirely of lawyers, because, as has been pointed out above, a number of the factors involved in the general problem are not legal in character.

The efforts now being made, not only in this State but throughout the Nation, are bound to secure the changes that will make our system of administering criminal justice a capable and effective agency to protect society against its enemies. The present public concern and agitation is justified. The ancient system, long since discarded in England, continues with us. The time has come for wise and deliberate changes in our system of procedure, so that, as has been said, criminal justice will be prompt and effective and free from its present burden of technicalities and formalism that a dead past has imposed upon it.

Certifying the Entire Record in Homicide Cases.

Upon my recommendation, St. 1925, c. 279, entitled, "An Act relative to certain appeals in murder and manslaughter cases and to the elimination of delay therein," was enacted and went into effect September 1. This act abolishes bills of exceptions in murder and manslaughter cases, and provides that in such cases the testimony and all the proceedings shall be taken stenographically and submitted *in toto* to the Supreme Judicial Court in the event of an appeal, that the defendant who desires to appeal must file a claim of appeal in writing within twenty days after the verdict, and that within ten days after notice of the completion of the record by the clerk of the court such defendant must file an assignment of errors. The record is then ready for submission to the Supreme Judicial Court, and, upon being filed there, the case is ripe for argument.

The effect of this act is to eliminate the vast delay (sometimes years) usually involved in agreeing upon a bill of exceptions in any important case, and to save considerable expense to the government. This saving of time was strikingly shown very recently in two murder cases argued before the Supreme Judicial Court. In one case, under the former system, the trial was held in 1921, and has just been argued upon a bill of exceptions; in the other case, under the new act, the trial was held in October, 1925, and has already been argued in the Supreme Judicial Court.

Interstate Rendition.

The number of interstate rendition and extradition cases handled by this Department through Assistant Attorney General Lewis Goldberg during the past year was 296. These included all manner of crimes, from simple misdemeanors to the most serious felonies. A large number of fugitives were returned to this Commonwealth upon charges of desertion, nonsupport and abandonment of wives and minor children.

At the request of the Governor, an analysis was made of sixty-nine requisitions which were issued for the return of fugitives charged with the crimes of desertion, abandonment or nonsupport during a period of six months, for the purpose of determining the approximate cost of interstate rendition for such crimes, the final disposition of such cases, and the extent to which families of fugitives had been benefited by such proceedings. These included requisitions upon the Governors of thirteen States, — thirty-three upon New York, nine upon Pennsyl-

vania, six upon Florida, four upon California, four upon New Jersey, four upon Illinois, two upon Vermont, two upon Maine, and one each upon Connecticut, Ohio, Alabama, Tennessee and Texas. All the requisitions, with the exception of that upon the Governor of Texas, were honored. The total cost of the interstate rendition proceedings in the sixty-nine cases was $7,621.29, or an average cost of $110.45 for each case. In no case was the defendant acquitted. Seven defendants were committed to houses of correction for terms ranging from three to nine months. Three defendants, after being placed upon probation and ordered to make payments to their families, fled from the Commonwealth and have not since been apprehended. One defendant was committed to the Boston State Hospital for observation. In the remaining fifty-eight cases, the families of the fugitives were directly benefited. In at least thirteen of the fifty-eight cases a reconciliation was effected, and, so far as is known, the defendants are now living with and supporting their families. In the remaining forty-five of the fifty-eight cases, and in some of the thirteen cases where a reconciliation had been effected, the court ordered the defendant to make weekly payments to the probation officer for the support of the family, or to the family directly, of amounts ranging from $3 to $30 per week, the average order being for $10 to $12 per week. In ten cases, bonds or bank accounts, averaging $1,000 each, were filed or deposited with the probation officer to insure the enforcement of the court's order relative to payments. In many cases the defendants had also been ordered to pay all the expenses of the interstate rendition proceedings. Such expenses were fully paid or are being paid in twenty-seven cases.

In addition to the foregoing direct benefits to the families of the fugitives, there are other benefits derived from bringing such fugitives back to the Commonwealth. One is the saving to the community of poor relief, which, in many cases, until the apprehension and return of the fugitive, was given by the community to the family. The second benefit is the deterrent effect upon would-be or potential family deserters. The fact that the various District Attorneys endeavor to, and do, secure the return from various parts of the country of men who abandon or fail to support their families undoubtedly deters other persons from committing the same crime. The practice of bringing such fugitives back from all parts of the country, wherever the facts indicate that a direct benefit will be obtained from the return of such fugitives, will be continued.

Hearings were held in eleven cases of fugitives sought by other States. In each of these cases the fugitive was represented by counsel, and in only one case was the judgment of this Department challenged by action in the courts, and then our action was sustained. In no case has the Governor of any other State refused to surrender fugitives from the justice of Massachusetts upon the ground that the papers accompanying the requisition, and passed upon by this Department, were not in proper form.

Excessive Requirement of Oaths and Affidavits.

The legal requirement that various documents shall be verified by oath or affirmation administered by a justice of the peace or notary public has become burdensome to the citizens of the Commonwealth and the solemnity and seriousness of an oath lessened by its perfunctory use. An illuminating letter on this subject was written to one of the newspapers, which reads, in part, as follows:

To attach an oath to every official and hundreds of unofficial acts, like the continuous enactment of legislation, in both of which errors Massachusetts holds the record, tends to defeat the very purpose for which oaths and legislation exist, by bringing both into contempt. Probably most of us will agree that the main purpose in requiring an oath is to impress the individual with the solemnity of his act, although doubtless there are those who would say that the purpose was to lay the foundation for a charge of perjury.

From either point of view, to carry oath-making to the extreme that makes a joke of the process of administering the oath defeats its purpose. So many oaths are required of every man of affairs that every private business office must have a magistrate in attendance, some subordinate usually being designated to operate the swearing mill just as one would be designated to wind the office clock or to lock the safe. Jurats are filled out in advance of signatures; oaths are taken over the telephone (the right hand held up before it); men swear to the best of their knowledge and belief about matters that they cannot possibly be familiar with; errand boys are sent to them to obtain their oaths off-hand to matters of belief so vague that no court would permit them to testify about them, or to pages of figures prepared by days and weeks of labor in which they had no share and for the accuracy of which they can vouch only because of their confidence in the persons who did prepare them. In these latter cases a voucher may be a proper assumption of responsibility, but the oath adds nothing to the voucher. And in all such cases not only is all the solemnity of an oath lost, but no conviction for perjury could possibly be had.

At the relation of His Excellency the Governor an investigation was made by this Department of the many documentary forms used in the

Commonwealth in which a jurat was required either by statutory enactment or department regulation, with a view to eliminating the necessity for the jurat therefrom by appropriate legislation.

To bring about the elimination of many useless oaths and affidavits that are now required I recommend the following amendment to the General Laws:

Chapter two hundred and sixty-eight of the General Laws is hereby amended by inserting after section one the following new section: — *Section 1A*. Except in a judicial proceeding or in a proceeding in the course of justice, no written statement required by law shall be required to be verified by oath or affirmation before a magistrate if it contains or is verified by a written declaration that it is made under the penalties of perjury.

Whoever signs and issues such a written statement containing or verified by such a written declaration shall be guilty of perjury and subject to the penalties thereof if such statement is wilfully false in a material matter.

The Admissibility of Private Conversations between Husband and Wife in Divorce Cases.

The Legislature in 1911 departed from the doctrine that had been established at common law and by statute that husband and wife are excluded on considerations of policy from testifying to conversations between them.

By St. 1911, c. 456, § 7, husband and wife were permitted to testify as to private conversations with the other in cases involving desertion and nonsupport.

I recommend that the exception to the general rule be further extended by permitting husband and wife to testify as to confidential conversations between them in libels for divorce and suits for separate maintenance.

Service upon Corporations.

Considerable difficulty has been met in instituting legal proceedings against corporations. G. L., c. 223, § 37, provides that in an action against a domestic corporation service "shall be made upon the clerk, cashier, secretary, agent or other officer in charge of its business." In the great majority of instances the most accessible, as well as the most natural, officers upon whom to serve process are the president or treasurer, but it is rarely possible for a deputy sheriff to certify that the president or treasurer is in fact an officer in charge of the business of the corporation within the meaning of the statute.

I recommend that section 37 be amended by inserting the words "president, treasurer" after the words "shall be made upon the" in the twelfth and thirteenth lines of the section, so that these officials may be included among those upon whom service may be made by reason of the offices which they hold.

Initiative Petitions.

Under the provisions of article XLVIII of the Articles of Amendment to the Constitution, initiative petitions, after being signed by ten qualified voters, must be submitted to the Attorney General for his consideration. If the Attorney General certifies that the measure is in proper form for submission to the people, that it is not substantially the same as any measure which has been qualified for submission or submitted to the people within three years, and that it does not contain subjects excluded from the popular initiative, it may then be filed with the Secretary of the Commonwealth, but not otherwise.

Four initiative petitions were filed with the Attorney General, — one to provide for the election of the members of the Public Utilities Commission, one to amend the law relative to veterans' preference in employment under civil service, and two to provide for old-age pensions. The first two initiative petitions were certified by me and duly filed. I declined to certify the two initiative petitions relative to old-age pensions on the ground that they contained subjects excluded from the popular initiative. A petition for a writ of mandamus has been filed against me in the Supreme Judicial Court for the County of Suffolk by one of the signers of the last two initiative petitions, seeking to compel me to certify the petitions on the ground that they do not contain subjects excluded from the popular initiative. A hearing upon the petition for the writ has not as yet been held.

Settlement of Small Claims against the Commonwealth.

The year just past is the first full year during which St. 1924, c. 395, has been in operation. During the year thirty-five claims have been considered and disposed of. Three others were called to the attention of the Department but have never been presented or pressed by the claimants. At the close of the year there remained nine claims pending and undecided. Nineteen claims, for a total of $2,120.40, were allowed and paid; sixteen were resolved adversely to the claimants, either by decision on the merits, by rejection because not within

the jurisdiction conferred by the statute, or by the withdrawal of the claimant after partial consideration had been had.

The claims presented have been interestingly diversified. They include fifteen claims arising from automobile collisions, three for damage done by trespassing animals, five for negligent acts of employees other than automobile collisions, three for damage to the personal property of employees, one for personal injuries to an employee not covered by the Workman's Compensation Act, one for loss of personal property of a State guardsman, one for taxes paid under alleged mistake, one for damage done by deer, one arising from the accounting with a delinquent State official, one for money paid to the State Treasurer by a public administrator and sought to be recovered by the alleged heirs, one for money expended by a contractor whose contract was not finally approved, one for the value of property stolen by an escaped insane person, and one for the counsel fees incurred by an employee in defending a suit arising from an automobile collision.

In the matter of three claims, the Department co-operated with the House committee on ways and means in ascertaining the facts, there being bills for reimbursement pending before the Legislature. In general, the statute in its present form seems well adapted to its purposes, and to practical ease of administration, and no changes in it seem necessary or desirable at this time.

HOUSE No. 349

REPORT

OF THE

SPECIAL COMMISSION

RELATIVE TO THE

PROVIDING OF ADDITIONAL ACCOMMODATIONS FOR THE SUPREME JUDICIAL COURT AND OTHER COURTS AND OFFICERS IN SUFFOLK COUNTY

UNDER CHAPTER 18 OF THE RESOLVES OF 1925

DECEMBER, 1925

BOSTON
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The Commonwealth of Massachusetts

REPORT OF THE SPECIAL COMMISSION RELATIVE TO THE PROVIDING OF ADDITIONAL ACCOMMODATIONS FOR THE SUPREME JUDICIAL COURT AND OTHER COURTS AND OFFICERS IN SUFFOLK COUNTY.

To the Honorable Senate and House of Representatives.

In compliance with the provisions of chapter 18 of the Resolves of 1925, we have the honor to present the following report of the Special Commission relative to the Providing of Additional Accommodations for the Supreme Judicial Court and Other Courts and Officers in Suffolk County.

Said resolve is as follows:

CHAPTER 18.

RESOLVE PROVIDING FOR AN INVESTIGATION RELATIVE TO THE PROVIDING OF ADDITIONAL ACCOMMODATIONS FOR THE SUPREME JUDICIAL COURT AND OTHER COURTS, FOR THE CLERKS AND REGISTERS OF SUCH COURTS, FOR CERTAIN OFFICIALS OF SUFFOLK COUNTY, AND FOR THE SOCIAL LAW LIBRARY.

Resolved, That a special unpaid commission, consisting of four persons to be appointed by the governor, and the sheriff of Suffolk county, ex officio, is hereby established for the purpose of studying and investigating into the present accommodations and needs and the probable future needs of the supreme judicial court, whether sitting for the commonwealth or for the county of Suffolk, the superior court for the county of Suffolk, the offices of the clerks of said courts and their assistants, the probate court for Suffolk county and the registry connected therewith, the land court and the office of the recorder thereof, the municipal court of the city of Boston and the Boston juvenile court and the offices of the clerks of such courts, the reporter of decisions, the social law library, the registry of deeds, the district attorney's office and

the offices of such other officers of Suffolk county as are now located in the Suffolk county court house. Members of said commission may expend for clerical and other assistance and for the expenses of such investigation out of such amount not exceeding three thousand dollars as may be hereafter appropriated, such sums as may be approved by the governor and council. Of the amount expended under the provisions of this resolve, two thirds shall, within a reasonable time after the state treasurer sends written request for the same to the treasurer of the city of Boston, be paid to the commonwealth by the county of Suffolk from any funds available therefor. The commission shall make a report to the general court by filing the same, together with drafts of such legislation as may be necessary to carry out its recommendations, with the clerk of the house of representatives not later than December fifteenth of the current year.

The Suffolk County Court House, located in Pemberton Square, Boston, was used and occupied for the several courts of Suffolk County and the Supreme Judicial Court for the Commonwealth of Massachusetts in 1890. Less than twenty years thereafter, the inadequacy of the building for the purposes for which it had been designed and was then used was so evident that a commission, appointed under the provisions of chapter 108 of the Resolves of 1904, recommended, in a report filed January 14, 1905 (Senate No. 26, 1905), certain large additions to the Court House. In 1907 and the five years following, between $900,000 and $1,000,000 was expended to provide additional court room accommodation in the Court House. No part of the cost of the construction of the Court House as originally built was paid by the Commonwealth, but it paid one-third of the cost of the alteration and addition made in 1907.

No specific reference is made in the report of the State House Commission on additions to the State House under chapter 150, Resolves of 1912 (House No. 133, 1913), to the housing of the Supreme Judicial Court for the Commonwealth in either of the additions to the State House recommended by that Commission. Later, some consideration was given to the use of the whole or a part of the west wing for that court, but no action was taken. In the report of the Special Commission appointed to investigate the necessity or advisability of constructing a new building

for the State Library, the Supreme Judicial Court and the Department of Education, filed under the provisions of chapter 22 of the Resolves of 1920 (House No. 4, 1921), the recommendation is made that a commission shall be appointed by the Governor to "secure a cite for the building to house the Supreme Judicial Court, State Library, and the Department of Education." No action was taken under this report.

Under Resolves, chapter 57, passed May 16, 1923, the Commission on Administration and Finance were authorized to investigate and to report as to the necessity or advisability of constructing a new building for the Supreme Judicial Court, the Archives Division of the State Secretary's Department and the State Library. A report was filed November 22, 1923 (House Document No. 59, 1924). That commission reported that certain changes, since the enactment of the resolve, had been made in the State House, and recommended certain other minor changes. It further recommended certain internal changes in the Suffolk County Court House at an estimated cost of $15,000, and concluded its report with the statement that with the proposed changes made, "there would be no justification at the present time for the construction by the State of a Supreme Court Building," and added to its report the following resolve:

Resolved, That an unpaid special commission be established to consist of the sheriff of Suffolk county and two other persons appointed by the governor, to make certain improvements, subject to appropriation to be made therefor, in the quarters occupied by the supreme judicial court in the Suffolk county court house.

No action has been taken under this report.

As provided in chapter 18, Resolves of 1925, the present commission is established "for the purpose of studying and investigating into the present conditions and needs and the probable future needs of all the courts and other offices now located in the Suffolk County Court House."

The Commission has had numerous hearings, and has sought to obtain the views of the judges of the several

courts, clerks of the several courts, and all other officials now housed in the Court House, as also the views of the Mayor and City Council of the city of Boston, and the Massachusetts and Boston Bar Associations, Trustees of the Social Law Library, members of the Bar and Chamber of Commerce, and a duly advertised public hearing was held on October 22, 1925, with several adjournments.

The Commission in its study of this subject has been impressed with the view that a serious mistake has been made at times in attempting to deal with the problem in a piecemeal way. It is evident that the original Court House was constructed with a view to its adequacy for many years, but without sufficiently taking into consideration the growth of the population of the city and the increase of litigation. The addition made to the Court House begun in 1907 was thought, by the commission having it in charge, to provide for a growth of twenty years, although the commission, as appears from its records, as kept by its secretary, expressed doubt as to this. The increase in population, of a greater and more diverse character than during any prior decade, has increased certain classes of litigation as well as certain business of the Probate Court, and very much increased the business conducted in the Registry of Deeds.

There is no reason to think that this increase, relatively speaking, will not continue substantially in the same proportions as have existed in the past, and the Commission is of the opinion that it will.

There are two points of view with which to approach the problem, — first, the present need of additional accommodation, and second, the provisions to be made for the future. And involved in both of these points of view is the question of the cost of whatever plan is to be adopted. It seems clear to the Commission that whatever plan is adopted, the layout should be so adequate and comprehensive that actual future additions of buildings should be but an extension of such comprehensive plan. It also seems clear to the Commission that the present purchase of land sufficient to provide for such additional buildings would result in future economy.

To determine, as is required by the present resolve, the "present condition" of the Court House, a survey of the available space and its uses was made and the same is shown in detail in Appendix A hereto attached and made a part of this report. This may be summarized as follows:

	Square Feet.
1. Total area occupied by Supreme Judicial Court	8,542
2. Total area occupied by Supreme Judicial Court clerks	3,495
3. Total area occupied by Supreme Judicial Court stenographers	1,479
4. Total area occupied by Reporter of Decisions	1,420
5. Total area occupied by Superior Court	34,317
6. Total area occupied by Superior Court clerks, civil	7,533
7. Total area occupied by Superior Court clerks, criminal	3,978
8. Total area occupied by Superior Court lobby	4,965
9. Total area occupied by Superior Court jury rooms	9,855
10. Total area occupied by District Attorney	6,364
11. Total area occupied by Probate Court and Registry	10,667
12. Total area occupied by Land Court	5,328
13. Total area occupied by Municipal Court, civil	8,090
14. Total area occupied by Municipal Court clerks, civil	4,464
15. Total area occupied by Municipal Court, criminal	4,796
16. Total area occupied by Municipal Court, clerks, criminal	4,639
17. Total area occupied by Municipal Court lobby	2,848
18. Total area occupied by Juvenile Court	1,992
19. Total area occupied by Registry of Deeds	18,759
20. Total area occupied by Probation officers (State Commission)	1,148
21. Total area occupied by Probation officers (Superior)	1,902
22. Total area occupied by Probation officers (Municipal)	3,072
23. Total area occupied by Social Law Library	12,760
24. Total area occupied by masters' and auditors' hearing rooms	2,454
25. Total area occupied by Bar Examiners	224
26. Total area occupied by sheriff's office	1,598
27. Total area occupied by superintendent of buildings	13,842
28. Total area occupied by City Prison	11,376
	191,907

To determine the present "needs and the probable future needs" of the courts and offices now located in the Court House, evidence has been received and independent investigation made.

Among other things we have observed the differences in the number of new cases entered in the several courts in 1924 as compared with 1914, and the percentage of increase or decrease indicated thereby. While we do not attach very much significance to these percentages, because they are often due to causes which prevent them from bearing any direct relation to the real work of the court, we give them here for what they are worth.

It appears that the number of new entries on the docket of the Supreme Judicial Court for the Commonwealth for the year 1924 shows a small decrease over the year 1914 of 12 cases, or a decrease of 3 per cent. This does not, however, indicate a decrease in the volume of business of the court, for, during this period, a large number of long and important cases were before the court.

The corresponding increase of entries in the Supreme Judicial Court for Suffolk County was 771 cases, or an increase of 39 per cent.

The increase in the Superior Civil Court was 5,053 cases, or 69 per cent; in the Superior Criminal Court 2,770 cases, or 45 per cent.

The increase in the Municipal Civil Court was 10,496 cases, or 59 per cent; in the Municipal Criminal Court, a decrease from 54,722 to 40,197 cases, or 21 per cent. This change largely results from the different method of handling violations of the liquor law.

The increase in the Probate Court was 2,417 cases, or 59 per cent.

The increase in the Land Court was 289 cases, or 50 per cent.

In the Juvenile Court 1,120 cases were entered in 1914 and 1,006 in 1924, or a decrease of a little over 10 per cent. This decrease is accounted for by the clerk as an indirect result of prohibition.

The increase in the cases handled by the office of the District Attorney was 45 per cent.

The number of the documents filed for record in the Registry of Deeds was 49,383 in 1914, and 93,873 in 1924, or an increase of 90 per cent.

Following in a general way the order of the courts and offices adopted in the foregoing schedule, we find and report these needs to be as follows:

The Supreme Judicial Court has at present two good court rooms and probably will not require more than two. In any future plans, however, it would be very desirable that the court room designed for use of the Full Court should be substantially larger than the one now used, which at times has been found to be much too small to accommodate all who find it necessary or desirable to attend the sessions of the court. The offices of the clerk of the Supreme Judicial Court for the Commonwealth seem to be adequate for the transaction of its business except that there is now a need for more storage space, and this need will, of course, increase as time goes on. We think this additional storage space ought to have at least 300 square feet of floor space, ought to be located conveniently near the main office, and should have better protection against fire than that now in use. The offices of the clerk of the Supreme Judicial Court for the County of Suffolk also seem to be adequate for present needs, except in the matter of storage space for its records, and the clerk of that court is of the opinion that, except in that respect, its office room will be adequate for the next ten years. It should, however, in any planning for the future, be given a substantial amount of additional storage space, located conveniently near the main office and with the best protection against fire that modern construction can provide.

Except in the respects above noted, the present quarters of the Supreme Judicial Court, both as a court for the Commonwealth and as a court for Suffolk County, fall far short of what is reasonably needed. The judges of this great court are required to do their work under conditions which would not be regarded as productive of the best results in a well-equipped modern law office. Each justice of this court ought to have an office of his own to work in, with provision for a library of the books in most frequent use, and an adjoining room for his clerk and stenographer. At present there are only two rooms available for such use,

and only one of them is of suitable size. The Chief Justice should also have a suitable room in which to meet people who find it necessary to see him in regard to court matters. At present the only room available for this purpose is so small that if more than three people call at once it provides rather scant standing room. Although the law makes provision for a clerk and stenographer for each of the justices of this court, it is impossible to find in the present quarters places where they all can work. When the valuable Thorndike Library, together with a fund for keeping it up, was recently given this court, no suitable or convenient place could be found for it, and attorneys' rooms and waiting rooms adjacent to the Equity Court room were taken for the purpose. As a result, there is no place where counsel in attendance at that session of the court can confer with each other or with their clients or witnesses, except in the corridors of the Court House. Any new plan should provide a suitable place for the Thorndike Library and for the restoration of attorneys' rooms and waiting rooms to their former use. It should also provide more rooms for the accommodation of attorneys attending the sessions of the Full Court, and for messenger and court officers in attendance on both branches of the court.

A consideration of the needs of the Supreme Judicial Court would be very incomplete that failed to give any attention to its larger aspects. It has been urged upon us with great force that what is reasonably needed for this great constitutional court, a co-ordinate branch of the State government, is that it be located either in the State House or in a suitable separate building adjacent thereto, which shall also contain the State Library. In support of this view it is argued that the history of this court shows that it is constantly becoming to a larger extent an appellate court, and will inevitably ultimately become practically wholly devoted to work of that character; that the tendency long has been for this appellate work to be done at the sittings of the court in Boston, thereby offering to all parts of the Commonwealth more prompt and efficient service; that this tendency has already progressed to such an

extent that twenty-four twenty-fifths (24/25) of its business is transacted at Boston; that as now conducted it is so distinctly a court for the whole Commonwealth that its expense should be borne largely by the Commonwealth, a consideration which no doubt entered largely into the assumption by the Commonwealth of one-third of the cost of the remodelling of the present Court House in 1907; that as a co-ordinate branch of the constitutional government it should be given the same consideration as are the executive and legislative branches; that as a precedent for such consideration it is to be observed that courts of a similar character are already so treated by many of the principal States of the Union, and that the Supreme Judicial Court of the United States is fittingly located in the Capitol at Washington; that our own court, because of its recognized authority and standing throughout our land and abroad, is well worthy of such treatment; and that by such treatment the Commonwealth would not only confer upon the court an honor so conspicuously deserved, but by the appropriateness and dignity of its surroundings would tend to increase the respect with which our people should regard the judicial branch of republican government.

On the other hand, many of those who have appeared before us have expressed their opposition to a separation of this court from the other courts. In support of their views they argue that while the Supreme Judicial Court is the highest court in the Commonwealth, it is after all a court devoted chiefly to the trial of causes; that it adds materially to the practical judgment of the court that its members should devote at least a part of their time to the *nisi prius* work; that it is therefore undesirable that it should become wholly an appellate court; that its location in the same building with the other courts tends to expedite business and better serves the convenience of litigants and counsel; and that (as one attorney tersely put it) its high repute rests upon the strength of its opinions and does not need to be supported by the dignity or elegance of its quarters.

As between these two views, the Commissioners are not

unanimous, and therefore are unable to unite on any specific recommendation that one view be adopted rather than the other. We are, however, agreed that the question is one of importance, which should be considered and determined before large sums are expended in providing for new quarters for this court that may be only temporary. Accordingly, in the several proposals for new structures which we have considered and submit herewith, we have not contemplated providing new quarters for this court in any of such new structures, but have thought that if any of these proposals were adopted, the relief of the present Court House from its congestion would make it possible to provide for the immediate needs of this court by extending its present quarters in the spaces vacated by other courts, helped out, perhaps, by the introduction of private elevator service. We are confirmed in this view by the fact that the removal of this court from the present Court House would give but little relief to the overcrowded condition of the building.

One of the most pressing and urgent demands for larger quarters comes from the extremely congested condition of those now available for the Superior Court. Not only the great increase in the volume of its business, but the constantly increasing public demand for a more rapid disposal of its cases, in both its civil and criminal branches, have contributed to this congestion. To meet this demand the court has been maintaining nine jury sessions for the trial of civil cases, and five jury sessions for the trial of criminal cases. It must also maintain an equity motion session, one or more equity merit sessions, at least one jury waived session, and a divorce session. Seventeen court rooms which it uses in the present Court House, with their judges' rooms and such waiting rooms as they now have, occupy 34,317 square feet of floor space. The jury rooms in use with these court rooms are insufficient in number, and are in many instances badly located, poorly lighted and poorly ventilated. They occupy at present about 9,855 square feet of floor space. At least six additional court rooms for jury sittings with twelve additional jury rooms should be

provided as rapidly as it can be done. If the present court room used for the second civil jury session be adopted as a standard size for such court rooms, and Room 251 be taken as a standard size for jury rooms, the additional floor space required for this increase would be approximately 16,800 square feet. But we are of the opinion that it would be poor policy, from an economical and from every other standpoint, to look ahead for only fifteen or twenty years, which, in view of the probable increase of the business of this great trial court, we regard as the extreme limit of time during which such an increase of court and jury rooms would be found adequate. We think that true economy would require that provision be made for the construction of at least double this number of additional court and jury rooms, not necessarily by constructing them all immediately, but at least, if they be only partly constructed now, by building in such a way that all can be ultimately built without requiring the destruction of what has been previously done, or the taking of additional land for the purpose. While speaking of jury rooms we should add that the present grand jury room is poorly located, because often subjected to serious interference from outside noise, and in planning for new construction, better quarters should be provided for it.

In dealing with this matter of additional court rooms and jury rooms, there are certain closely related considerations which have impressed themselves strongly upon us, and which ought to be noted, because they seem to have an important bearing both on the inadequacy of the present Court House and on the kind of provisions that should be made for the future. A well-appointed court room should be accompanied by suitable rooms for the use of counsel, for consultations with parties and witnesses, and for the use of officers who are required to remain in attendance upon the court. Most of the court rooms in the present Court House are sadly lacking in these particulars. It is not only unseemly and discreditable that the corridors should be the only places available for these purposes, but there are obviously more serious objections to a condition of

things that tends to bring jurymen into frequent contact with parties and witnesses. Such conditions are greatly aggravated in the present Court House by the grossly inadequate system of elevators, which not only causes insufferable delays in congested hours, but causes parties, witnesses, jurymen and the public often to be jammed together in overcrowded elevators. They are further aggravated by the utter absence of adequate toilets for the use of those who are obliged to remain in attendance upon the courts.

Another matter which ought to receive very serious consideration, not only in connection with the sessions of the Superior Court, but with those of the Municipal Court as well, is the desirability of separating, so far as it is practicable to do so, the criminal from the civil courts. Perhaps it is too much to expect that there should be a separate criminal court building, although it seems a pity that it cannot be done. At least, they should be segregated as far as possible, and any future plans should have in mind the accomplishment of this object.

The judges' lobby of the Superior Court is too small. At present it occupies about 5,397 square feet of floor space. There is need of additional private offices and study rooms for the judges and for additional hearing rooms for matters heard in chambers. It is difficult to reduce this requirement to exact figures, but we think a reasonable estimate would be twice the present space.

The clerks' office of the Superior Civil Court is well located, but is extremely crowded. More room is needed, both for the most effective work of the clerks and for the convenience of those who have business with the office. The same is true to a greater degree of the clerks' office of the Superior Criminal Court. Both offices need better and safer storage facilities for their records. We have not been able to form any exact estimate of the additional space that will be required for these offices. Probably it will not be necessary to do so, for we have at no time contemplated the entire removal of the Superior Court from the present building, and whatever changes are made, no doubt

these needs will be met as incidental to any plan that may be adopted for relieving the present congestion.

Facilities for masters' and auditors' hearings may well be considered in connection with the Superior Court, since that court furnishes most of the opportunities for that kind of work. There is much to be said in favor of the rule that requires such hearings to be held at the Court House. But if it is to be effectively carried out without hampering or delaying the trial of cases, it seems obvious that more rooms should be provided for such hearings. We should think twice as many rooms as are now available would be a reasonable estimate.

Speaking generally of the requirements of the Superior Courts, it at first seemed to us that they could all be met by the removal which we contemplated of certain other courts and offices from the present building. Further consideration has, however, convinced us that the additional room that can be obtained for the Superior Court in this way would not, unless the Municipal Court also were to be located elsewhere, take care of the situation for so long a period as to warrant excluding from our plans the probable necessity of ultimately providing additional room for the Superior Courts outside of the present structure.

The Probate Court and Registry of Probate are in urgent need of new quarters. Their present quarters are extremely inadequate. The business of this court has increased 100 per cent in the last fifteen years. Changes in its jurisdiction now require full hearings upon the merits in important causes in which in times past its hearings were likely to be brief and formal. Its work has been greatly increased by its new jurisdiction in divorce cases. It has but one regular court room. It needs three. It has in its lobby but one room where it can transact business in chambers. It should have two. The Registry of Probate has about reached the limit of the vault space in which must be kept records of vital importance to everybody. The Registry room is not large enough to furnish reasonable accommodations for the clerical work or for those who have to go there to transact business. We have no hesitation in saying that the Registry

should be at least twice its present size, and that it should have three times its present vault space. In our opinion the Probate Court and Registry of Probate should be taken out of the present building and suitably provided for in such new structure as may be built, leaving the space they now occupy to be devoted to other purposes.

The Land Court transacts in its quarters in the present Court House the larger part of its work for the whole Commonwealth. It is, on the whole, fairly well situated, and suffers less than the other courts from the congestion of the building. Much of its business is transacted by mail. There are times, when numerous parties are required to appear, that it is overcrowded, but the difficulty is not serious. It needs much more vault room for its records. It has but one court room at present, and probably at no very distant date will need another. This need, however, is not immediate, but should be kept in mind in building for the future. More room might well be provided for the convenient use of people who visit the Recorder's office. We deem it desirable that the removal of this court from the present building be provided for in any plan for new structure, in order that its present quarters may be used for other purposes.

The Municipal Civil Court shows a very large increase of business during the last ten years. This would be expected from the changes that have taken place in its jurisdiction, as well as from its natural growth. At present it conducts five civil sessions. It needs four more court rooms for civil business. They need not be large, and it is estimated that 1,500 square feet of floor space for each court room would be sufficient. It needs proper consultation rooms for each court room.

The Municipal Criminal Court now conducts three sessions. Such increase as its criminal business shows is largely due to automobile cases. It is probable that three additional court rooms would provide for the needs of its criminal business for a long time to come.

The office of the clerk of the Municipal Civil Court should be at least double its present size. It is ill adapted for

effective work and is wholly incapable of accommodating those who come to it on entry days. The clerk's office of the Municipal Criminal Court should also be double its present size. The judges' lobby should have three additional hearing rooms. We have not been inclined to favor a separate Municipal Court building. It seems to us desirable that this court remain in the same building with the Superior Court. If its needs for additional rooms as we have found them are recognized, we have no doubt that in meeting those needs all that is necessary can be done in the way of improving the accommodations in the judges' lobby, and in rearranging the business of the court.

The Juvenile Court since its organization has occupied quarters extremely inadequate. No excuse for them occurs to us, unless it be that the organization of this as a separate court was at first regarded as more or less experimental. If so, the excuse no longer exists. The principle of dealing with young offenders apart from the surroundings which attend criminal courts for adults is unquestionably sound, both on humanitarian and practical grounds. It points plainly to the desirability not only of avoiding, so far as possible, physical contact with the atmosphere of crime, but also of the most adequate facilities reasonably necessary to accomplish the best results. In some of the larger cities this object has been deemed so important that large and expensive buildings, entirely separate from all other courts, have been constructed. We do not believe that it is necessary, or even desirable, to go so far as that. Its minimum needs at the present time are a suitable court room (which need not be very large) and a smaller room for hearings, two rooms for judges, a general waiting room for boys accompanied by their parents and a smaller one for girls, at least four rooms for probation officers, and proper office room for clerks and records. It should be on the first floor of any building in which it is located and should have its own separate entrance. At present its jurisdiction covers only what is known as Old Boston, the courts in other parts of the city having their own juvenile sessions. In planning for the future, we should have in mind not only

the probable increase in the needs of the present court, but the possibility that it may be found desirable to extend its jurisdiction to cover all the juvenile court work of the whole city. Instead of the present floor space of 1,992 square feet, we think it should have approximately 6,000 square feet in any new location, and more than that amount if provision is to be made for such extended jurisdiction.

The Registry of Deeds, we think, should be removed from the present building. We have been unable to see any other proper method of meeting its requirements. The main room where the record books are kept and where those who are looking up titles do their work, is no longer large enough for the purpose. A suggestion made to us that it might have galleries, where some of the older record books could be kept, would in no proper sense meet the situation. The nature of the use to which the room is put, seems to us to require that it be all on one floor. The only reasonable thing to do is to have a larger room. This is not, and cannot be made available in the present building, nor, when we think of what the possible loss of such vital records would mean, can we regard it as desirable to hunt for some means of continuing to keep them on the top floor of a building which does not provide all the protections against fire which are available in more modern structures. The constant growth of these records is something that cannot be avoided. Besides the main record room with its necessary desks and tables for public use, there is a constantly increasing demand for rooms where the business connected with transfers of titles may be transacted. The facilities offered in the present registry for this purpose are entirely inadequate. There must also be room for a general office, and rooms where copying, comparing and indexing can be properly done. At present these facilities are so inadequate that it is hard to see how the work can be done without great liability to serious mistakes; it certainly cannot be done in the most efficient or convenient manner. It should further be noted that the large numbers of people who find it necessary to visit the registry for the most part are distinct from those who visit the courts, and no

doubt contribute much to the badly congested conditions of the elevator service. It would be much better that there should be a different access to the registry from that in use for the courts. We have no hesitation in recommending that the quarters now occupied by the registry should be utilized for court purposes, and that the registry itself should be located in a new structure, where it can be placed on or near the first floor, given a separate entrance, provided with every protection against fire that modern science can devise, and, in view of its inevitable growth, be given approximately double its present floor space.

The public demand for more rapid work and better results in the criminal courts has led to considerable increases in the number of assistants of the District Attorney. One result has been that the offices heretofore in use by his department have been outgrown. He needs additional consulting rooms and waiting rooms. We do not think his estimate of three times his present floor space is excessive.

The County of Suffolk is very fortunate in being provided with the Social Law Library. It contributes nothing but the use of quarters in the Court House and $1,000 a year towards the maintenance of one of the largest law libraries in the country. Other large counties in the State expend large sums annually for smaller libraries in their county court houses, wholly maintained by them. We have not considered it desirable that the library should be located elsewhere than in the present building, which will no doubt continue to be the place where it is most needed. At present the library has about 77,000 volumes. The number of volumes increases at the rate of about 2,000 a year. Many books now have to be put in what is known as the stack room, where they are not readily available for use. Additional room for this library will soon be needed. We think this can be provided to some extent in the course of the changes in the present building, which must accompany any adequate plan that may be adopted. Not only can additional floor space be obtained, but a reasonable use of galleries would in this case probably not be objectionable.

The needs of the Probation Departments are:

1. An additional room of approximately 500 square feet for the State Probation Commission.

2. Double the present space for the Probation Department of the Superior Court, located in one place instead of scattered over four floors.

3. Double the present space for the Probation Department of the Municipal Court, better located in reference to the courts it serves.

Remedies Suggested.

1. Coming now to the consideration of the best way to provide for the foregoing needs, the first question that naturally arises is whether it is practicable to enlarge the present building, within the limits of the land now owned by the city. Since the building now occupies all the land, that question is, in substance, whether the requirements can be adequately met by increasing its height. It was found that this would require the removal of the mansard roof and the entire construction which was built in 1907, and would require other provisions for the various departments housed in that construction while the upper stories were being built. While such an enlargement, beginning at the original granite walls of the building, would in our opinion be structurally possible, the difficulties which would be encountered, if the court work and other activities centered in the building were to be carried on, would be such as to render it wholly impracticable. Added to these difficulties would be, upon completion, a very much increased congestion in the approaches, corridors and elevators throughout the building. Besides all this, the relief so obtained would not be sufficiently permanent to justify the expense incident to the destruction of the old and the construction of the new parts of the building. These reasons are deemed sufficient to cause us to reject such a plan.

2. It was suggested to us that we ought to recommend the building of a new court house in some other part of the city — that our ideas ought to be big enough to conceive of the establishment of what is commonly referred to as a new civic center; but the suggestion has not seemed

to us a practicable one. It has not seemed to appeal to many of those who appeared before us. Involving as it would the abandonment of the present building, and the taking of land which in all probability would be considerably more expensive than that adjacent to the present location, and, what is perhaps still more important, the disregard of the natural effect which the long location of the courts in this part of the city has had upon its development, we believe that such a change would not be likely to meet with public favor. We have, therefore, assumed that in considering what lands were available for new construction, we were, as a practical matter, limited to those that were adjacent to the present Court House.

3. Consideration has been given to the utilization of a plot of land now occupied by the Boston police headquarters having an area of 10,886 square feet. The Commission is of the opinion that this lot is inadequate for the additions deemed to be necessary, and also that even if the area were greater, there is grave doubt as to whether the present or the future light and air would be adequate. It is no doubt true that the needs of the Municipal Court could be met by buildings on this plot, together with suitable additions to the north end of the top of the present Court House, and that such a scheme would release the present court rooms of that court for use by the Superior Court; but this relief would be temporary and would not obviate the necessity of building elsewhere to provide for the pressing needs of other courts and offices which we have stated.

Plan I.

The next in order of consideration of the plans, involves the reconstruction of a portion of the present Court House and relates to the plot of land designated Plot II on the plan hereto attached and made a part of this report. It contemplates the taking of the land lying substantially north of the present Court House and adjacent thereto, and embraces the property bounded on the west by Somerset Street extended to the present new line of Court Street;

on the north by the new line of Court Street; on the east by a line about 10 feet east of Stoddard Street, running south about 185 feet to the present northerly line of the Court House; and bounded on the south by said Court House lot. This parcel, including the area of Howard Street to be taken, contains about 29,000 square feet of land. In addition, approximately 3,400 square feet would be required for the extension of Somerset Street to Court Street, and approximately 1,450 square feet on the east as a substitute for Stoddard Street. Its use for an addition to the Court House, as is to be noted, is coupled with the consideration that five additional stories are to be added to the remaining north end of the present Court House, which was not built up in 1907 (when the last addition was made to the present Court House). This Plot II, with the average area of the additional stories to the present Court House (substantially 3,958 additional square feet), would afford a total of about 83,878 square feet.

A serious disadvantage of this plot is that the present available open space between the building to be constructed and the abutting building on said space (*i.e.*, between the Howard Athenæum and the Olympia Theatre) is insufficient for proper light and air (especially for the Registry of Deeds), and to increase this space by taking from the land upon which the addition is to be constructed would probably seriously curtail the availability of the plot as a whole for the proper and economical layout and construction of the necessary court rooms.

The uses to which a building consisting of five floors and four mezzanine floors if constructed upon this plot, with the additional stories on a portion of the present building, could be put are: adequate floor space for the Registry of Deeds, on the first floor above the ground floor, with separate entrance and elevators; all the present needs of the Municipal Court, its judges and officers; five court rooms for the Superior Criminal Court, with judges, jury and attorneys' rooms and clerk's office; adequate quarters for the District Attorney and Grand Jury; three Probate Court rooms, with sufficient rooms for judges, officers and

attorneys; Registry of Probate; Land Court; superintendent of buildings and adequate storage and vault rooms for the several courts.

In this plan the present City Prison would remain in its present location, although it is both inadequate and poorly arranged, and requires material alteration.

Any layout of the space afforded by Plot II is complicated by the necessity of conforming to the layout of the present building and the difficulties of design in merging the interior, and the avoiding of excessive expense in obtaining uniformity in the exterior construction.

The taxable value for year 1925 of the land and buildings, to be acquired in Plot II, is about $632,000. The approximate cost of this land, together with the approximate cost of a building to be constructed thereon, and the additions and alterations to the present Court House (movable furniture not included), is $5,200,000.

The studies of the Commission lead it to the conclusion that while Plot II presents some opportunities worthy of serious consideration, in that this new construction on this plot would be essentially an integral part of the present Court House and thereby have certain advantages, and would, on the whole, present a plan that supplies practically most of the actual present needs, it is almost wholly wanting in opportunities for the carrying out of a comprehensive plan for future expansion. It is, however, suggested as an alternative plan for consideration.

Plan II.

It appearing to the satisfaction of the Commissioners that none of the plans calling for the reconstruction of the present Court House, with an extension of the present building to be constructed on adjoining land, afford entirely adequate relief for the present, much less the future, requirements of the various courts and officers, consideration was then given to the other plots, designated Nos. I and III on the plan attached to this report.

Taking these up in the order named:

Plot designated No. I embraces that tract of land lying

between Somerset Street, Ashburton Place, Allston Street and Allston Place extended, to Ashburton Place, the total area of which is 32,112 square feet. The total taxable value thereof, for 1925, is $600,500. The approximate cost of this land, together with the present buildings thereon and the approximate cost of a building to be placed thereon, and the alteration of the present Court House (not including movable furniture), is $4,450,000.

This area would probably be lessened 650 feet to afford a wider space on the west side thereof, to wit, Allston Place, and Allston Place extended to Ashburton Place, and the total available space for building purposes would therefore be approximately 31,462 square feet.

The building to be constructed on this land, because of the contour thereof, would have on its northerly end two stories below the level of Ashburton Place.

The uses to which a building on this Plot I could be put for purposes of housing the courts and offices now in the present Court House are approximately the following:

On the lower stories facing Allston Street or Allston Place a new city prison, storage and vault rooms, a separate entrance to the criminal courts and also for prisoners transported to the Court House, with separate elevators for male and female prisoners to detention rooms and the courts above, and also an underground passageway from the present level of the lobby in the Court House to this lower story, affording access to other elevators on this story.

The first floor on the Ashburton Place level and the first floor mezzanine, in all, 25 feet in height, would be used for the Registry of Deeds and the officials and clerks of that office.

The next floor with a mezzanine floor would be used for three or more Probate Court rooms with appropriate lobbies for the judges, and the Registrar of Probate, with the necessary rooms for clerks and vaults. This floor and the floors above could be connected with the present Court House by a bridge over Somerset Street.

The next floor would be devoted in part to the Land

Court, and the remaining space thereof, if any, together with such other stories as could be constructed within the height now permitted under the zone law covering this locus, would be available for such of the Superior and Municipal Criminal Court rooms and their related rooms as could be put therein. It is estimated that seven court rooms for the uses of the Superior Court and six for the use of the Municipal Court would be made available.

It may be noted that the utilization of this lot would in a large measure continue the congestion of the corridors of the present Court House. There is also to be considered the future question of adequate light and air on the west side of the building. This plan is, however, presented as an alternative and should receive consideration.

Plan III.

Plot designated No. III includes the land bounded on the south by Allston Street; on the west by Bulfinch Street; on the east by Somerset Street extended to Court Street; and on the north by Court Street as now laid out — Howard Street to be discontinued between Bulfinch and Somerset streets. The total area of this plot is approximately 54,000 square feet. This area does not include the 3,400 square feet required to extend Somerset Street to Court Street. The taxable value for 1925 of this land and the buildings thereon is $645,100. The approximate cost of the land with the present buildings thereon, together with the approximate cost of a new building to be constructed thereon and the alteration in the present Court House (movable furniture not included), is $6,450,000.

The utilization of this plan would preferably contemplate the widening of Bulfinch Street, but with a width of 40 feet for that street there would still be available for construction approximately 48,000 square feet. In the judgment of the Commission this space would be adequate for the construction of a building to meet in a liberal manner all of the present needs of the courts and officers now in the Court House.

This plan being free from the limitations imposed by the

necessity of conforming to the existing plan of the old building would permit an arrangement far more practical in almost every way than is apparently possible on Plot II. This plan possesses some advantages not found in Plans I or II, and those advantages which it has in common with Plans I and II, it has to a greater extent.

In conjunction with the present Court House the adoption of Plan III would remove entirely from the present Court House the following: Registry of Deeds, Probate Registry, Probate Courts and related rooms, Land Court and related rooms, District Attorney and Grand Jury, Superior Criminal Courts and related rooms, Superior Criminal Court's clerk, Superior Criminal Court's probation officers, Municipal Criminal Courts and related rooms, Municipal Criminal Court's clerk, Municipal Criminal Court's probation officers, State Commission on Probation and City Prison.

From our studies of this plan we feel sure that ample facilities for waiting rooms, toilets, record and storage vaults, public lobbies, elevator service, etc., can be worked out which will insure adequate accommodations for the public, and for court and registry work.

Although the Registry of Deeds is similarly situated in relation to Court Street as on Plot II, it is much better lighted in Plan III, and it likewise has its approach from Court Street, and the people attending the Criminal Courts have access thereto at the opposite end of the building on Allston Street, which does not appear feasible on Plot II. The registry in this plan, being but one flight up from Court Street, would be ample in size, rectangular and compact in form, well lighted and easy of access.

Another very distinct advantage of this plan is that it goes a long way toward permitting a separation of the criminal courts, both Superior and Municipal, from their civil branches, and, as incidental to this, permits a relocation and reconstruction of the city prison, which at present is poorly arranged and antiquated in accommodations and does not readily lend itself to improvement and rearrangement. Such a relocation of the City Prison would not involve as serious an expense as might appear at first

thought, as the space utilized for it, while a necessary part of the new building, would not be desirable for other purposes. Such removal would also leave space in the old Court House which could be well utilized for other purposes. Outside access to the prison could be advantageously had from both Somerset and Bulfinch streets, well removed from other entrances to the building, and this location also lends itself to the convenient distribution of the prisoners to the various court rooms, both by stairs and elevators. The prison in this location would have well-lighted cell rooms of sufficient size, and also, what is lacking at present, a large storage room for seized goods.

We are quite aware that many people will think that we have outlined a plan which involves greater expense than ought now to be placed on the County of Suffolk; but it seems to us that the more important question is whether in the end the plan will furnish its own justification. We have no desire to recommend anything which will, in our judgment, in a few years bring this subject up to be considered all over again under circumstances where what has already been done will have to be destroyed or abandoned or subjected to expensive alteration. We think that it will be found to be true economy to adopt now a plan comprehensive enough to avoid any future necessity of resorting again to the piecemeal method. There are at least two considerations, both absolutely unavoidable, which we think ought to control the present situation: in the first place, that any future expansion must, if only one of these two plots, which we have shown, is taken, involve necessarily the taking of the other; and second, that whatever new building is now built ought to be built as part of a settled plan for a larger building, the rest of which can be constructed in the future without costly destruction of any of the part that has been previously built.

It is for this reason that the Commission is of the opinion that to provide for the present need of the courts and to provide an opportunity for a future expansion along such well-established and consistent lines, consideration should be given to the present acquiring of all the lands covered

by Plots I and III; that is, all the land within the bounds of Ashburton Place, Bulfinch Street and Allston Place extended to Ashburton Place, Somerset Street from Ashburton Place extended to Court Street, and said Court Street as now laid out. The number of square feet in this whole plot is, including the parts of the streets it would be necessary to discontinue, about 90,000. The building or buildings to be constructed on this land, and the question as to upon which part of the land a building should be first built, and the extent of the building itself, involving the possible future construction of additional units, is largely a question of architectural judgment upon which opinions may differ without affecting the general value of the plan. It is clear, however, that these two separate lots are available for the uses to which they are to be put. The question as to which one of them should be first built upon would be dependent on a number of considerations, including that of the availability of the one or the other for its continued present uses, thereby covering adequate carrying charges until the uses of the property became necessary for further additions to the Court House.

In a general way the Commission has considered the utilization of this whole plot, and there are strong reasons why the north end thereof should be first built upon. It is the judgment of the Commission that some of the greatest needs for additional facilities exist in the Registry of Deeds, the Registry of Probate and the Probate Court. If these were all it had to consider, it would advocate a separate building for housing them. Such a building could best be constructed on the north end of the plot, because the Registry of Deeds could be on the first or second floor, and because, since a very considerable percentage of the people going into the present Court House go to the Registry of Deeds and Probate Court and Registry, these people in that case would, instead of going up Pemberton Square to the present Court House, go to the new registries via Court Street, thus diverting a very considerable stream of pedestrians away from the now overmuch congested Court House lobby and elevators. There is also the accessibility

to this Registry of Deeds afforded by the Bowdoin Square station of the subway about 250 feet away and the Scollay Square station and Scollay Square Under station about 900 feet away. For these reasons we think that this plot is the best place to begin construction, even though the building contemplated is to provide for many other needs as well.

Studies have been made by the Commissioners which satisfy them that it is entirely feasible to adopt at this time plans for a building that will ultimately occupy both Plots III and I, but of which the northerly part only on Plot III need now be actually built, and so designed that when necessity arises for more room, its further construction up to Ashburton Place may be carried out with little inside or outside reconstruction, in complete compliance with such original plans and without detriment to its architectural appearance. We do not think that such a building need be of a monumental type, nor that it need have elaborate or expensive architectural features. This is what we think should be done, and we confidently expect that if adopted, it would settle the Court House problem for at least fifty years.

The Commission recommends the passage of the accompanying act.

Respectfully submitted,

HENRY A. WYMAN.
GEO. L. MAYBERRY.
FRED H. KIMBALL.
WILLARD P. ADDEN.
JNO. A. KELIHER.

PROPOSED LEGISLATION.

AN ACT TO PROVIDE ADDITIONAL QUARTERS FOR THE COURTS AND OTHER OFFICERS NOW OCCUPYING THE COURT HOUSE IN THE COUNTY OF SUFFOLK.

SECTION 1. For the purpose of carrying out the provisions of this act, a commission is hereby created, to consist of three citizens of the commonwealth, one of whom shall be appointed by the governor and one by the mayor of the city of Boston, within two months from the passage hereof, and the third shall be appointed by the chief justice of the supreme judicial court, the chief justice of the superior court and the chief justice of the municipal court of the city of Boston, or by a majority of said justices. The governor shall designate one member of said commission to be chairman thereof. The commissioners shall receive such compensation for their services as the governor and council shall determine.

SECTION 2. Said commission, acting in behalf of the city of Boston, shall employ an architect or architects and other necessary assistants, and cause to be prepared plans for the remodelling of the present building and for such additions thereto or new buildings as will in connection with the use of the present court house be sufficient for the needs of the courts and for the prompt administration of justice in said county.

After the approval of said plans by the commissioners, they shall, on behalf of the city of Boston, contract for the construction, completing and furnishing of such new building and for the remodelling of the existing court house; but no such contract shall be entered into until it has been approved by the governor, the chief justice of the supreme judicial court and the mayor of the city of Boston, or by a majority of them. The said work of construction and remodelling shall be commenced as soon as practicable and

shall be completed within a time to be limited in the contract.

SECTION 3. The commission may take by eminent domain under chapter seventy-nine of the General Laws or acquire by purchase or otherwise, on behalf of the city of Boston the whole or part of such lands, or rights therein, easements and privileges thereto appertaining in the city of Boston as are included within one of the following described parcels of lands, namely: —

1. Northerly by Court street; easterly by Somerset street and the westerly line of Somerset street extended, southerly by Ashburton place; westerly by the land of the Boston University and the easterly lines of Bulfinch street and Allston place. The commission may in connection with the taking of said property discontinue those portions of Howard street and Allston street which lie within the above described parcel, and may appropriate such part of any land so taken, to the purpose of widening Bulfinch street and widening and extending Allston place, as it deems necessary, and shall have all power and authority necessary for said purposes. Upon the taking herein authorized the city of Boston shall extend Somerset street northerly to Court street.

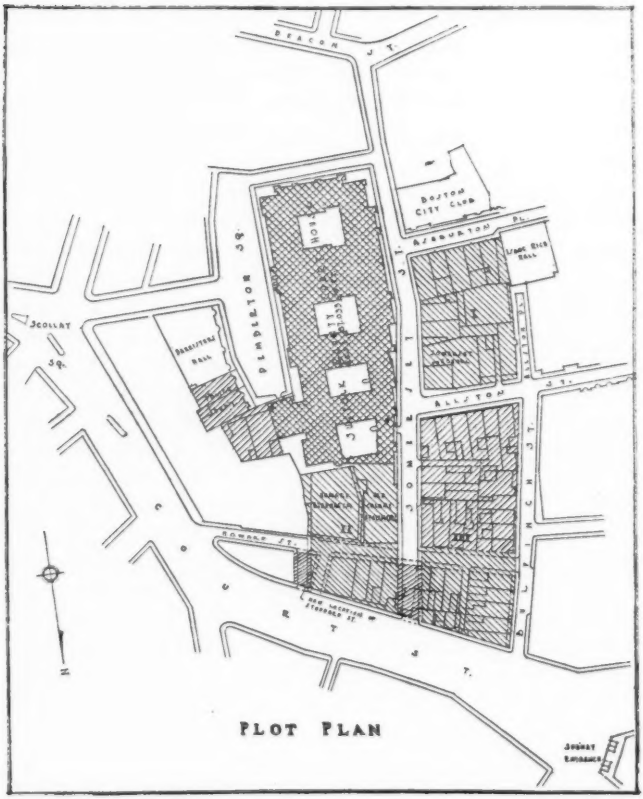
2. Northerly by Court street; easterly by the easterly line of the land of the trustees of Luke Beard and by such line extended to Court street; southerly by land of the city of Boston; westerly by the easterly line of Somerset street and said line of said street extended to Court street. The commission may in connection with the taking of said property discontinue that part of Howard street which lies within the above described parcel; and may also discontinue Stoddard street. Upon the taking herein authorized the city of Boston shall extend Somerset street northerly to Court street, and lay out a street not less than 40 feet in width along the easterly line of the parcel above described from Howard street to Court street.

SECTION 4. For the purpose of carrying out the provisions of this act the city of Boston shall borrow, outside the statutory limit of indebtedness, from time to time as may be determined by the commission, such sums as may be necessary, not exceeding in the aggregate

and may issue bonds or notes therefor, which shall bear on their face the words, Boston Court House Loan, Act of

1926. Each authorized issue shall constitute a separate loan, and such loans shall be paid in not more than twenty years from their dates. Except as herein provided, indebtedness incurred under this act shall be subject to the laws relative to the incurring of debt by said city.

SECTION 5. This act shall take effect upon its passage.



APPENDIX A.

Areas of Quarters occupied by Various Courts and Officers in the Suffolk County Court House.

Supreme Judicial Court.

		Square Feet.	
Second floor:			
Court room, Full Bench	47 x 38	1,786	
Waiting room	10 x 12	120	
Toilet	10 x 12	120	
			2,026
Court room, Equity	38 x 50		1,900
Lobby, Supreme Court:			
Room 234	14 x 25	350	
Toilet	7 x 11	77	
Room 235	24 x 34	816	
Office of Chief Justice	12 x 14	168	
Dressing room	13 x 14	182	
Messenger's room	13 x 17	91	
Consultation, or mahogany room	21 x 23	483	
Room 231, judges	16 x 16	256	
Thorndike Library (three rooms)	18 x 22	396	
	15 x 18	270	
	15 x 18	270	
			3,359
Second mezzanine floor:			
Judges' office	12 x 14	168	
Judges' office	18 x 25	450	
Toilet	11 x 11	121	
Stenographer	13 x 14	182	
			921
Fourth floor:			
Opinion room	14 x 24		336
Total area occupied by Supreme Judicial Court			8,542

Clerk of the Supreme Court for the Commonwealth.

First mezzanine floor:			
164, main office	14 x 18	252	
165, clerk's office	18 x 23	414	
			666
Fourth floor:			
Room 416, storage	13 x 18		234
Total			900

CLERK OF THE SUPREME COURT FOR SUFFOLK COUNTY.

		Square Feet.	
First mezzanine floor:			
Main office, 160	37 x 20	740	
Clerk's office, 162	21 x 18	378	
Private office, 163	14 x 18	252	
Room 158, records	13 x 24	312	
Room 159, records	13 x 19	247	
Room 161, records	18 x 37	666	
Total			2,595

COURT STENOGRAPHERS.

First mezzanine floor:			
Room 170	13 x 16	208	
Room 171	13 x 16	208	
Room 169	13 x 17	221	
			637
Second mezzanine floor:			
Room 257	18 x 15		270
Basement:			
Vault	13 x 44		572
Total			1,479

REPORTER OF DECISIONS.

Second mezzanine floor:			
Room 266	9 x 16	144	
Room 1	21 x 24	504	
Room 2	15 x 28	420	
Room 3	11 x 17	187	
Room 267, assistant	11 x 15	165	
Total			1,420

SUPERIOR COURT.

Court rooms:			
First floor:			
1st Civil Jury Session	46 x 38	1,748	
One consultation room	16 x 10	160	
One consultation room	16 x 10	160	
Judges' lobby	24 x 18	432	
Judges' lavatory	4 x 8	32	
			2,532
Second floor:			
2d Civil Jury Session	46 x 38	1,748	
Waiting room	16 x 10	160	
Waiting room	16 x 10	160	
			2,068
1st Criminal Session	37 x 48	1,776	
Women's room	13 x 13	169	
Women's toilet	8 x 4	32	
Court officers	15 x 13	195	
			2,172

		Square Feet.
Court rooms — *Concluded.*		
Second floor — *Concluded.*		
2d Criminal Session	46 x 38	1,748
Detention room	24 x 18	432
Court officers	18 x 7	126
		2,306
Equity Motion Session	37 x 50	1,850
Waiting room	23 x 18	414
		2,264
Equity Merit Session	41 x 33	1,353
Judges' room	13 x 20	260
Toilet	3 x 8	24
		1,637
Jury waived	38 x 34	1,292
Third floor:		
3d Civil Jury	46 x 38	1,748
Waiting room	16 x 10	160
Court officers	16 x 10	160
		2,068
4th Civil Jury	36 x 50	1,800
Judges' room	15 x 32	480
Bar	14 x 18	252
		2,532
6th Civil Jury	36 x 50	1,800
Judges' room	13 x 14	182
Toilet	5 x 8	40
Bar	22 x 18	396
Court officers	14 x 18	252
		2,670
7th Civil Jury	38 x 46	1,748
Court officers	12 x 8	96
		1,844
Extra Jury Session:		
Room 322	36 x 34	1,224
Judges' room	12 x 20	240
		1,464
Divorce Session	34 x 38	1,292
Fourth floor:		
5th Civil Jury	48 x 38	1,824
Judges' room	14 x 26	364
Toilet	8 x 4	32
Waiting room, 425	18 x 10	180
Waiting room, 423	16 x 10	160
Waiting room, 427	16 x 12	192
		2,752

		Square Feet.
Fourth floor — *Concluded.*		
8th Civil Jury:		
Court room	54 x 32	1,728
Extra Jury Session:		
Room 407	51 x 32	1,632
Judges' room	16 x 19	304
		1,936
Extra Jury Session:		
Room 402	55 x 32	1,760
Total area occupied by Superior Court		34,317

CLERK OF SUPERIOR CIVIL COURT.

First floor:		
Main office	54 x 33	1,782
Private office	16 x 20	320
Private office	9 x 12	108
Office	17 x 18	306
Office	24 x 20	480
Office	20 x 20	400
Vault	17 x 14	238
		3,634
First mezzanine floor:		
Gallery	54 x 6	324
Clerk's gallery	16 x 32	512
Clerk's room	17 x 18	306
Vault	17 x 13	221
Room 167	18 x 20	360
Room 168	18 x 20	360
		2,083
Basement:		
One vault	15 x 19	285
One vault	19 x 23	437
Women's locker room	20 x 25	500
Storage	33 x 18	594
		1,816
Total area occupied by clerk		7,533

CLERK OF SUPERIOR CRIMINAL COURT.

Second floor:		
No. 215, main office	36 x 20	720
No. 212, private office	18 x 14	252
No. 211, clerk's office	32 x 22	704
No. 210, assistant clerk's office	16 x 13	208
Toilets		100
No. 209, witness fees	18 x 15	270
		2,254
Second mezzanine floor:		
No. 261, office	28 x 20	560
No. 260, room	18 x 14	252
No. 259, criminal records	32 x 22	704
No. 258, women's room	16 x 13	208
		1,724
Total area occupied by clerk		3,978

SUPERIOR COURT LOBBY.

		Square Feet.	
Second floor:			
Judges' lobby:			
Room 244, library	16 x 32	512	
Room 245, lobby	22 x 32	704	
Room 247, large lobby	44 x 25	1,100	
Room 248, Chief Justice's room	19 x 19	361	
Toilet	4 x 8	32	
Toilets	10 x 28	280	
Room 277, second mezzanine, judges' room	24 x 18	432	
Toilet	4 x 8	32	
			3,453
Hearing room 250	19 x 19	361	
Hearing room	19 x 16	304	
Messengers' room	25 x 19	475	
Toilet	8 x 4	32	
Court officers	18 x 8	144	
			1,316
Second mezzanine floor.			
Court officers	14 x 14		196
Total area occupied by Superior Court Lobby			4,965

JURY ROOMS.

First mezzanine floor:			
Room 173	24 x 18	432	
Toilet	4 x 8	32	
Room 172	24 x 20	480	
Toilet	4 x 8	32	
			976
Second floor:			
Room 248		301	
Room 201		236	
Room 202		280	
			817
Second mezzanine floor:			
Room 265	13 x 19	247	
Room 275	16 x 32	512	
Toilet	5 x 12	60	
Room 276	12 x 17	204	
Toilet	6 x 6	36	
Room 251	18 x 22	396	
Room 252	18 x 22	396	
Room 253	18 x 22	396	
Room 254	18 x 22	396	
			2,643

		Square Feet.	
Third floor:			
Room 340	22 x 32	704	
Toilet	12 x 12	144	
Room 341	18 x 25	450	
Toilet	8 x 5	40	
Room 321	12 x 24	288	
Room 325	20 x 28	560	
Room 329	26 x 24	624	
Room 330	24 x 33	792	
			3,602
Third mezzanine floor:			
No. 353	14 x 22	308	
Toilet	15 x 7	105	
			413
Fourth floor:			
No. 401	18 x 28	504	
Toilet	6 x 6	36	
No. 403	16 x 24	384	
No. 405	20 x 24	480	
			1,404
Total area occupied by Jury Rooms			9,855

DISTRICT ATTORNEY.

Second floor:			
Public room	20 x 25	500	
District Attorney's office	15 x 17	255	
217, Assistant District Attorney's office	12 x 20	240	
222, Assistant District Attorney's office	14 x 17	238	
4, Assistant District Attorney's office	20 x 37	740	
5, Assistant District Attorney's office	14 x 25	350	
224, Assistant District Attorney's office	14 x 25	350	
Waiting room	13 x 37	481	
Waiting room	17 x 18	306	
			3,460
Second mezzanine floor:			
1, clerks and stenographers	10 x 20	200	
2, clerks and stenographers	13 x 15	195	
3, clerks and stenographers	12 x 15	180	
4, clerks and stenographers	9 x 11	99	
Library	20 x 25	500	
Room 262	17 x 34	578	
Second floor:			
Grand Jury room	32 x 36	1,152	
			2,904
Total space occupied by District Attorney			6,364

PROBATE COURT AND REGISTRY.

(First floor and basement and first mezzanine floor.)

		Square Feet.	
Probate Court:			
First floor:			
Court room	39 x 43	1,677	
Anteroom	10 x 15	150	
Women's room	10 x 17	170	
Judges' lobby	26 x 24	624	
Officers' room	10 x 15	150	
Judges' toilet	8 x 11	88	
Basement commitment room	21 x 25	525	
First mezzanine floor:			
Judges' room	13 x 17	221	
Secretary	11 x 15	165	
Total area occupied by Probate Court			3,770
Registry of Probate:			
First floor:			
Main room	112 x 24	2,688	
Register's office	15 x 18	240	
Assistant Register's office	10 x 7	70	
Three vaults		496	
First mezzanine floor:			
Five vaults		640	
			4,134
Basement:			
Copying room	24 x 72	1,728	
Six vaults		680	
Store room	10.6 x 16	168	
Lavatory	17 x 11	187	
			2,763
Total area occupied by Registry			6,897
Total area occupied by Probate Court			3,770
Total area occupied by Court and Registry			10,667

LAND COURT.

Fourth floor:			
Court room	29 x 38	1,102	
Hearing room	12 x 18	216	
Hearing room	12 x 14	168	
Judge's office	21 x 15	315	
Judge's office	19 x 14	266	
Judge's office	14 x 17	238	
Public room		952	
Recorder's office	14 x 13	182	
Stenographer's office	10 x 12	120	
Vault	7 x 24	168	
Vault	11 x 5	55	
Toilet	6 x 15	90	
			3,872

		Square Feet.	
Fifth floor:			
Engineer's office	28 x 33	924	
Private office	13 x 14	182	
Private office	13 x 14	182	
Men's lavatory	10 x 12	120	
Women's lavatory	8 x 6	48	
			1,456
Total area occupied by Land Court			5,328

MUNICIPAL CIVIL COURT.

Third floor:			
1st Session:			
Court room	38 x 46	1,748	
Judges' lobby	8 x 10	80	
Court officers	8 x 10	80	
304, waiting room	10 x 15	150	
305, waiting room	10 x 15	150	
			2,208
2d Session:			
Court room	38 x 48	1,824	
306 waiting room	14 x 14	196	
308 waiting room	13 x 14	182	
			2,202
3d Session:			
Court room	38 x 32	1,216	
Judges' room	12 x 20	240	
			1,456
4th Session:			
Court room	36 x 32	1,152	
Judges' room	12 x 24	288	
			1,440
Third mezzanine floor:			
5th Session:			
Court room	28 x 28		784
Total area occupied by Municipal Civil Court			8,090

CLERK OF MUNICIPAL CIVIL COURT.

Third floor:			
Main office, 313 and 314	64 x 20	1,280	
Private office, 312	13 x 16	208	
Records	24 x 25	500	
Record gallery	13 x 18	234	
Coat room	6 x 10	60	
Lavatory	6 x 8	48	
Poor debtor clerk	15 x 24	360	
			2,690
Third mezzanine floor:			
Records	28 x 29		812
Basement:			
Vault A, 1	13 x 14	182	
Vault A, 2	24 x 16	384	
Vault B	18 x 22	396	
			962
Total area occupied by Clerk of Municipal Civil Court			4,464

MUNICIPAL CRIMINAL COURT.

		Square Feet.	
First floor:			
1st Session:			
Court room	44 x 38	1,672	
Court officers' room		320	
			1,992
2d Session:			
Court room	37 x 47	1,739	
Space back of dock	12 x 16	192	
Women's waiting room	13 x 13	169	
			2,100
3d Session:			
Domestic relations court room	22 x 32		704
Total area occupied by Municipal Criminal Court			4,796

CLERK OF MUNICIPAL CRIMINAL COURT.

First floor:			
Main office	20 x 36	720	
110, rear office	12 x 16	192	
107, pleading office	14 x 16	224	
104, docket room		554	
			1,690
First mezzanine floor:			
176, clerk's private office	18 x 18	324	
152–153, storerooms	13 x 15	195	
	11 x 16	176	
	13 x 14	182	
Gallery		348	
153–154, rest room for women		432	
151, court officers	11 x 16	176	
			1,833
Basement:			
Vault 1	18 x 22	396	
Vault 2	24 x 30	720	
			1,116
Total area occupied by Clerk of Municipal Criminal Court			4,639

MUNICIPAL COURT LOBBY.

First mezzanine floor:			
Judges' lobby	22 x 32	704	
	14 x 22	308	
	44 x 13	572	
Toilet		270	
			1,854
177, hearing room	18 x 18	324	
179, hearing room	18 x 18	324	
178, messengers' room	18 x 19	342	
			990
Total area occupied by Judges' Lobby			2,844

JUVENILE COURT.

		Square Feet.	
First floor:			
Judges' room	13 x 18	234	
Clerk's office	38 x 26	988	
Probation officer's room	16 x 18	288	
Probation officer's room	13 x 22	286	
Toilet	5 x 14	70	
Vault	9 x 14	126	
Total area occupied by Juvenile Court			1,992

REGISTRY OF DEEDS.

Fifth floor:			
Main office	45 x 187	10,315	
Main desk	49 x 19	931	
Rear main desk	34 x 19	646	
Telephones	8 x 24	192	
Register's office	18 x 16	288	
Comparing room	80 x 21	1,680	
Clerks	12 x 15	180	
Assessors	12 x 13	156	
Consultation	12 x 16	192	
Storage	14 x 28	392	
Public coat and toilet rooms		1,008	
Employers' toilet, women	11 x 11	121	
Employers' toilet, men	8 x 14	112	
Vault	6 x 13	78	
			16,291
Sixth floor:			
Copyists	80 x 18	1,440	
Comparers	22 x 19	418	
Coat room and toilet		218	
			2,076
Second mezzanine floor:			
Room 272, index room	14 x 14	196	
Room 273, index room	14 x 14	196	
			392
Total area occupied by Registry of Deeds			18,759

PROBATION OFFICERS AND DEPARTMENT.

First mezzanine floor:			
State Commission on Probation:			
Room 174	23 x 28	644	
Room 175	18 x 28	504	
Total			1,148

SUPERIOR COURT PROBATION OFFICES.

First mezzanine floor:			
Room 166	18 x 37		666
Second floor:			
Room 206	10 x 15	150	
Room 208	10 x 15	150	
			300

		Square Feet.	
Second mezzanine floor:			
Room 256	11 x 15	165	
Room	13 x 15	195	
			360
Third floor:			
Room 311	24 x 24		576
Total area occupied by Superior Court Probation Offices			1,902

MUNICIPAL CRIMINAL COURT PROBATION OFFICE.

First floor:			
Room 108	42 x 14	588	
Room 129	37 x 16	592	
Room 130	13 x 17	221	
Room off 1st Session, criminal		1 0	
Room off 2d Session, criminal		132	
			1,713
Second mezzanine floor:			
Medical offices:			
Room 263	14 x 21	294	
Room 264	17 x 25	425	
			719
Third floor:			
Room 309	18 x 20	360	
Room 310	14 x 20	280	
			640
Total area occupied by Municipal Criminal Court Probation Office			3,072

SOCIAL LAW LIBRARY.

Fourth floor:			
Main room	170 x 46	7,820	
	19 x 44	836	
Librarian's office	11 x 17	187	
Stenographer	11 x 17	187	
Stack room	34 x 45	1,530	
			10,560
Third mezzanine floor:			
Stack room	42 x 44		1,848
Fifth floor:			
Study room	11 x 16	176	
Study room	11 x 16	176	
			352
Total area occupied by Social Law Library			12,760

MASTERS' AND AUDITORS' HEARING ROOMS.

Fourth floor:			
No. 418	30 x 18	540	
No. 419	24 x 20	480	
No. 421	24 x 20	480	
No. 422	30 x 18	540	
			2,040
Second mezzanine floor:			
No. 274	23 x 18		414
Total			2,454

SECRETARY TO BAR EXAMINERS.

		Square Feet.	
Fourth floor:			
Room 414	14 x 16		224

SHERIFF.

Basement:			
No. 1	36 x 32	1,152	
No. 2	18 x 22	396	
No. 3	5 x 10	50	
Total			1,598

SUPERINTENDENT OF BUILDINGS.

Basement:			
Carpenters	20 x 60	1,200	
Plumbers	12 x 28	336	
Electricians	12 x 28	336	
Painters	16 x 28	448	
Forelady	16 x 12	192	
Engineering	20 x 20	400	
Locker room	18 x 20	360	
Locker room	14 x 25	300	
Chore women	16 x 20	320	
			3,892
Sub-basement:			
Boiler room	76 x 42	3,192	
	22 x 38	836	
Coal bunker (approximately)		1,500	
			5,528
First floor:			
Office	14 x 22	308	
Telephone office	14 x 22	308	
Public toilet:			
Women	8 x 14	112	
Men	8 x 14	112	
Men	18 x 8	144	
Storeroom	25 x 17	425	
			1,409
First mezzanine floor:			
183, superintendent	14 x 22	308	
182, superintendent	14 x 22	308	
Men's toilet	8 x 20	160	
Women's toilet	8 x 20	160	
Men's toilet	8 x 18	144	
157, women's room	14 x 18	252	
			1,332
Second floor:			
Men's toilet	8 x 18	144	
Men's toilet	8 x 20	160	
Women's toilet	8 x 20	160	
			464
Second mezzanine floor:			
Men's toilet	8 x 18		144

		Square Feet.	
Third floor:			
327, janitor	15 x 10	150	
326, storage	14 x 16	224	
Men's toilet	10 x 16	160	
Women's toilet	4 x 9	36	
Men's toilet	4 x 6	24	
			594
Third mezzanine floor:			
Storage	12 x 12		144
Fourth floor:			
Men's toilet	5 x 13	65	
Men's toilet	10 x 8	80	
Men's toilet	10 x 8	80	
Women's toilet	10 x 5	50	
Women's toilet	10 x 5	50	
			325
Total area occupied by Superintendent of Buildings			13,832

CITY PRISON.

Basement:			
Prison cells, including padded cells		3,452	
Office, City Prison		432	
Janitor		312	
Kitchen		480	
			4,676
House of Detention:			
Office		180	
Matron		216	
Cells		1,440	
			1,836
First floor:			
Prison cells	67 x 32	2,144	
Police room	18 x 24	432	
Matron	22 x 26	572	
Matron	13 x 14	182	
			3,330
Second mezzanine floor:			
Detention room:			
Men	20 x 40	800	
Toilet	8 x 14	112	
Women	15 x 24	360	
Toilet	5 x 14	70	
Officers	12 x 16	192	
			1,534
Total area occupied by City Prison			11,376

INDEX TO APPENDIX.

Special Number

The BAR BULLETIN

No. 10 Issued Quarterly by the Bar Association of the City of Boston 84 State Street, Boston, Mass. Dec. 1925

Second Bench and Bar Night

December 9, 1925

Dinner with music on the organ. **Brief Speeches.**

Songs by ROBERT H. ISENSEE

"Caricatures in the Law," with lantern slides. RICHARD W. HALE.

Photo Play. "Alexander Hamilton," as produced by the Yale University Press and distributed by Pathe Exchange, Inc.

An Ancient Rule of Grays Inn

"At a pension held here in Michaelmas term, 21 Hen. VIII, there was an order made, that all fellows of this house, who should be present . . . at dinner or supper, when there are revels, should not depart out of the hall until the said revels were ended, upon the penalty of 12d." HERBERT, "Antiquities of the Inns of Court," 335.

Glimpses of Ancient Festivals of the Bar.

IN a volume of lectures on "The Inns of Court and of Chancery," delivered in the Middle Temple in 1912 to remind the English bar of its own history, A. R. Ingpen, K.C., gives glimpses of the "Bench and Bar Nights" in the Sixteenth and Seventeenth Centuries.

"To understand the constitution and objects of the Inns of Court we must revert to the Ordinance of 20 Edward I, 1292. The Apprenticii de Banco were to follow the King's Court and to serve the public interest. The King's Court was used in the largest sense, and the Inns of Court were intended primarily for the association and education of lawyers, but in a second sense as a place to educate the nobility and gentry for the highest positions in the State. It is so stated in the Orders made 15th April, 1630, by the Lord Keeper and Judges by the King's Command signified by the Privy Council . . . This explains the mode of keeping Grand Christmas . . . It was a mimic Court to teach demeanour to the nobility and gentry. It was a very serious business, and the holding of the Offices attached, in succession, was a stepping-stone to being ultimately chosen Reader and a Master of the Bench."

The celebrations on All Saints Day and Candlemas Day are described, as quoted in Williamson's "The Temple London," in The Brerewood MS.

"To do the guests due honour, two ancient Barristers of the Inn were chosen to wait upon the Judges and Serjeants at their chambers four or five days before the Feast, and convey to each a solemn invitation. On arrival at the Hall the guests were met by two ancient Utter Barristers, bearing basins and ewers of sweet water for washing their hands; while two other ancient Barristers attended them with towels; 'no man refusing the office esteeminge it rather an honor than disgrace unto him.'

"The next duty was discharged by the two Readers, who met each guest at the lower end of the Hall, and thence escorted him to his place of honour at the Feast. For distinction and order's sake, the Lent or Senior Reader carried a white staff in his hand, while the Summer Reader bore a white rod. Having ushered all the guests to their seats, the Readers then returned to the lower end of the Hall, whence, preceded by music, they ushered in the first dish carried by young gentlemen of the House under the degree of the Bar. Every dish as it arrived was placed on the table by one of the Readers, while the other standing by waited on the Judges. Besides this, the puisne Reader served every mess throughout the Hall, receiving the provisions from the Steward and himself placing them on the table.

"Dinner ended, the Readers again waited upon the guests, escorting them either into the garden or some other retiring place until the Hall was cleansed and prepared for the next part of the entertainment. Which being done, the Judges were once more ushered solemnly back each to his place by the Readers. The rest may be best told in the words of the Manuscript:

"Then the ancient of the two, that hath the Staffe in his hand standes at the upper end of the Barre table, the other with the white rodd placeth himself at the Cupbord, beinge in the middle of the Hall opposite to the Judges, where the Musicks beinge begonne he calleth twice the Master of the Revells. At the second call, the ancient with the white staffe in his hand advanceth forward and begynnes to lead the measures, followed first by the Barristers then the gentlemen under the Barre all according to their severall antiquities and when one measure is ended the Reader at the Cupbord calls for another and so in order . . .

"When the last measure is dancing the Reader at the Cupbord calles to one of the gentlemen of the Barre, as he is walkinge or dancinge with the rest, to give the Lords his Matys Judges a songe, who forthwith begynnes the first lyne of any Psalme as he thinks best after which all the rest of the company follows and sings with him.

"Whilst they are thus walkinge and singinge the Reader with the white rodd departs from the Cupbord and makes his choise of a competent nomber of Utter-barristers and as many under the Barre, whom he takes with him into the Buttrie; where, unto everie of the Barristers there is delivered a towell with wafers in it and unto everie gentleman under the Barre a woodden bowle filled with Ipocrace, with which they march in order into the Hall, the Reader with his white rodd goinge foremost. When they come neare the half pace opposite to the Judges the company divide themselves one half bothe of Barristers and those under the Barre standinge on the one side of the Reader, the other on the other side. Then after a solempn low congie made, the gentlemen of the Barre first carrie the wafers the rest with the new Reader standinge in theire places. At theire retourne they all make another solempne low congie And then the gentlemen under the Barre carrie their bowles of Ipocrace to the Judges and retourninge when the Judges have dranke they make the like solemnpne congie and so depart all savinge the new

Readers elect who wayte upon the Judges until theire departure and then ushed them downe the Hall unto the Court Gate and there take theire leaves of them." (pp. 349–351.)

"Likewise besides the solempne Revells or measures aforesaid they were wont to be comonlie entertayned either with Post Revells performed by the better sorte of the younger gentlemen of the Societie with galliards corantos and other dances or els with stage plaies. The first of these Feasts beinge held to be the begynnynge and the latter the end of Christmas."

Mr. Ingpen also tells us that:

"Owing to excesses and extravagances . . . and the uproar occasioned, the Inn, for the time being, being given over to the entertainers, Orders were made from time to time during the reign of Elizabeth forbidding the keeping of Grand Christmas, and that the feast shall be celebrated solemnly, except that a reasonable allowance for minstrels was made by the Inn. There is an Order of the 11th February, 15 Elizabeth, that the minstrels serving the Inn shall have a yearly wage of 26s. 8 d., besides their salary at Revels . . . During the reigns of James I and Charles I there was a revival of the practice of keeping Grand Christmas, and the excesses were worse than during the Tudor period . . . the original object . . . was lost sight of, and it had become a mere entertainment.

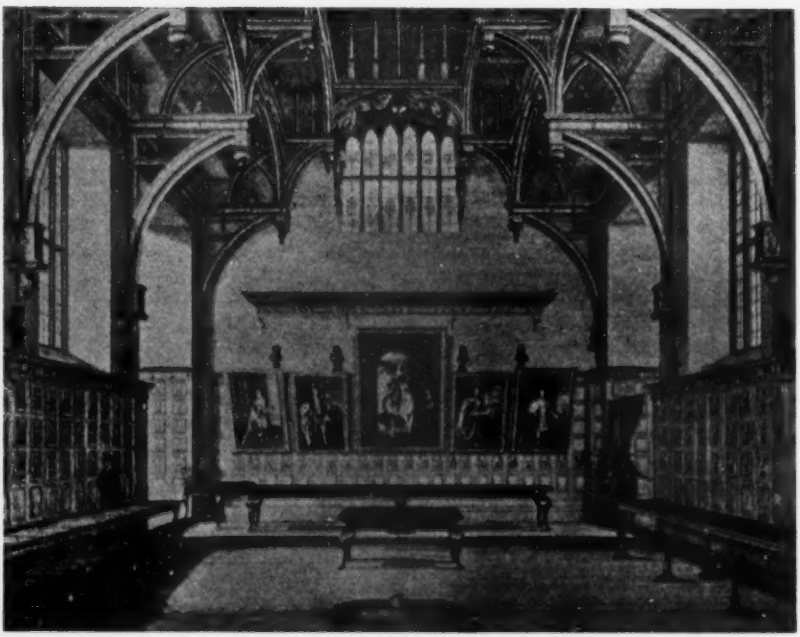
"There was once a very old ceremony . . . when the Judges attended, of dancing or walking the old measures round the coal fire in the centre of the Hall. In 1634 when Sir Robert Brerewood wrote his history of the Middle Temple, the measures were walked, but early in times they were elegantly danced. Sir Robert deplores that men had fallen away from the good old custom, and says in former times it would have been a shame for the students of the Inn to be unable to dance. This ceremony was kept up later in the Inner Temple. The last occasion there was in 1733 when Lord Talbot took leave of that Society on receiving the Great Seal. The Lord Chancellor, Master of the Temple, Judges and Benchers, led by the Master of the Revels, danced or walked round about the coal fire, according to the old ceremony, three times . . . and all the time of the dance, the ancient song, accompanied by music, was sung. What was the ancient song I know not. The fire-place in the centre of our Hall was removed in February, 1830 . . .

"In addition to the revels at Christmas time, and the Reader's entertainments twice a year which lasted three weeks on each occasion, the members of the Society were very fond of stage plays and masques . . . One was 'Twelfth Night' performed in this Hall at the Reader's Feast on Candlemas Day, 2nd February, 1602.* At Shrovetide, 23rd February, 1635, Sir William Davenant's Masque 'The Triumphs of the Prince d'Amour' was produced with great splendour in this Hall in the presence of the Queen, the Prince Elector and many ladies of the Court.

"These amusements during the two early Stuart Kings gave rise to much insubordination among the students of the Inn, and the Records contain many entries of Orders of the Bench suppressing breaches of discipline. These occur for the most part in attempts to keep the Hall open for continuing Commons during vacation time, especially at Christmas time, against the Orders of the Bench, and the wearing of hats, boots and spurs in the Church and Hall and carrying swords and daggers. Such breaches of discipline, however, show rather the trend of social conditions under the Stuarts."

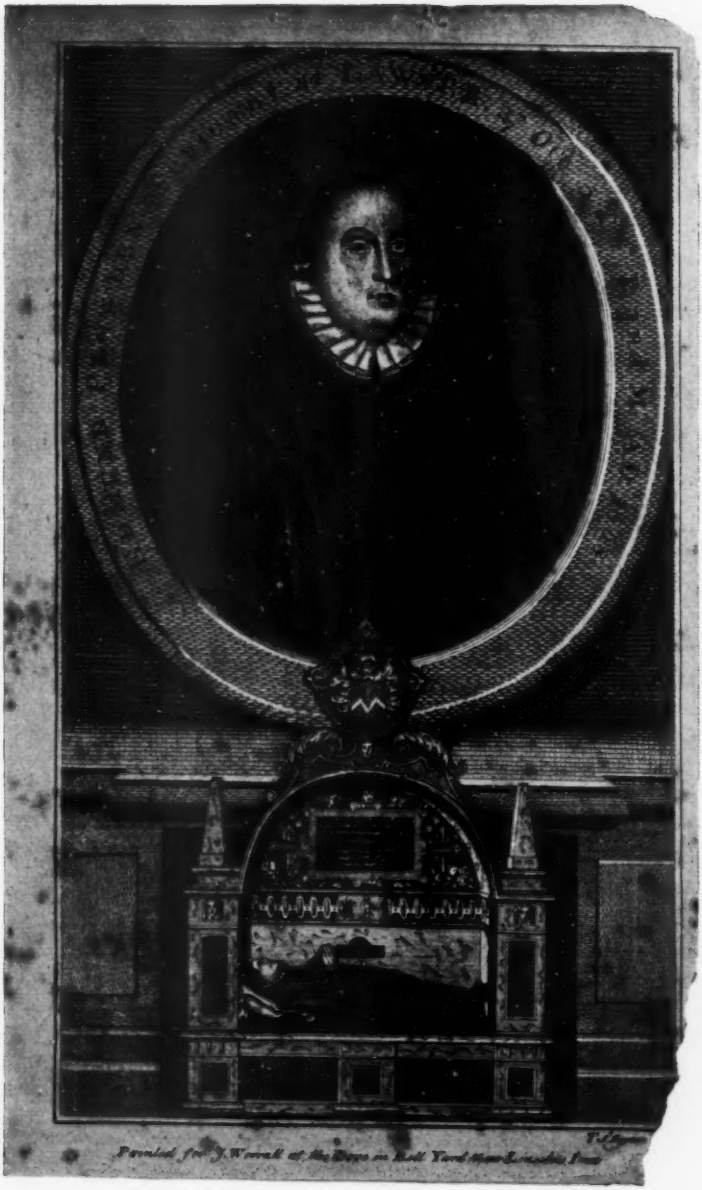
* Thorpe speaks of this as "the first representation of 'Twelfth Night'" under Shakespeare's personal supervision. (Thorpe, p. 263.)

The Middle Temple Hall, looking East.



Middle Temple Hall, shewing the position of the Bench table, cupboard, and fireplace. 1800.

"The fire-place following the custom of the age was in the centre of the room, the smoke being left to find a devious way out through the lantern in the roof." WILLIAMSON, "The Temple London," (pp. 230-233.)
The cupboard "in the early records is called Abacus, or square table." INGPEN.


Printed for J. Worrall at the Bible in Bell Yard near Lincolns Inn

In Bellot's "The Inner and Middle Temple," p. 177, it appears that "Dugdale gives some of the particulars of those feasts and pastimes. On Christmas Day, after service in the church, breakfast was served in the Hall, with brawn, mustard, and malmsey.

"At dinner the first course consisted of 'a fair and large bore's head upon a silver platter, with minstrulsye.' Napkins and trenchers, with spoons and knives were supplied to every table. The dinner ticket was 12 *d.*"

At "the huntinge night held annually in Lincoln's Inn and mentioned in the *Black Book* in the reign of Elizabeth, . . . after the second course the Common Serjeant delivered 'a plausible speech' to the Lord Chancellor and his company . . . and then the ancientest of the masters of the revels sang a song with the assistance of all present. The following lines from Hone's *Year Book* may be taken as the type of the 'ancientest's' song:

"'Bring hither the bowle
The brimming brown bowle
And quaff the rich juice right merrilie;
Let the wine cup go round
Till the solid ground
Shall quake at the noise of our revelrie

"'Let wassail and wine
Their pleasure combine
While we quaff the rich juice right merrilie;
Let us drink till we die
When the Saints we relie
Will mingle their songs with our revelrie.'"
(Bellot, p. 179.)

Thorpe, in his "Still Life of the Middle Temple," p. 343, speaks of the passing of a custom which, "as Serjeant's Inn has perished also, and a new judge no longer has to resign his Inn on his appointment" . . . "can never be restored."

"When a bencher of the Middle Temple was raised to the Judicial Bench during term, he dined at the high table in the usual way; but at the close of dinner he rose and passed down the hall between shouted 'Good-bye's!' The doors swung open, and, as he passed out, the bell tolled solemnly as for a parting soul. He had gone from among us!

"Sir George Honyman's was the last instance of this ancient form of 'send-off.'"

The Origin of the Bar of England.

"The Bar of England" was created in 1292 when (by 20 Edward I), "the King ordained that John de Metingham, Chief Justice of the Court of Common Pleas or Common Bench, and his fellow justices should select from every county 'de attornatis et apprenticiis' to follow his Court . . . to do service to the King's Court and people and that those chosen and no others should transact affairs therein." By 1400, two societies of these "apprenticii" were settled on the property between Fleet St. and the Thames, which formerly belonged to the "Brotherhood of Soldier Monks — Knights of the Temple" which was founded during the Crusades and dissolved by Pope Clement V in 1312.

Edmund Plowden.

The following account of the Middle Temple Building and of its presiding genius, Edmund Plowden, whose name is vaguely familiar to the bar, is interesting in connection with the pictures here reproduced.

"The chief credit of the building has long been given to Edmund Plowden, whose bust now adorns the east end of the Hall." He assumed office as Treasurer in 1561, and the building began in 1562. "Plowden's name and arms (azure a fess dancetté flory or), with the date 1573, are in the central space at the top of the south bay window at the west end of the Hall. They are accompanied by an inscription in Latin which states: 'The greatest care of this man completed this work for those who cultivated the Laws: To them be honour through all time.' . . .

Edmund Plowden "by common consent was in his day esteemed the Society's most illustrious son. Born about the year 1518, Plowden studied at Cambridge and, it is believed, also at Oxford before entering upon the work of his life as a lawyer. 'He was, in his youth excessive studious, so that, (we have it by tradition), in three years space he went not once out of the Temple.' A devoted adherent of the old religion, he sat in Parliament during the reign of Queen Mary, and in 1558 was summoned by her to the state and degree of a Serjeant-at-Law. But the Queen died three weeks later before the return to the Writ was made, and in the revulsion of feeling against the adherents of Rome her successor Elizabeth did not renew the summons. Plowden, therefore, was never advanced to that degree. Retiring from political life, he devoted himself exclusively to his profession. In 1561, he was elected Treasurer of the Inn and held the office for six years. Elizabeth is said to have offered him the Chancellorship if he would change his religion; but he never held judicial office, for that was a price he refused to pay. Plowden's unique reputation as a lawyer rests upon his Reports published under the title of Commentaries. Written in Law French they were first published in 1571, and again with the addition of a second part in 1578. Three further editions followed in the sixteenth century and two more in the seventeenth (1613 and 1684), while four editions appeared in English between 1761 and 1816. . . ." WILLIAMSON.

He died in 1584, and following directions in his will was buried in the Temple Church, where, at one time, there was "a faire toomb with his full pourtraict remaining." The fair tomb still exists, but has been moved to the triforium of the Round. Upon it reclines his effigy with hands folded beneath a semi-circular canopy. In the old print here reproduced the inscription refers to him as a "Serjeant," but he never became a Serjeant for the reasons above quoted. He described himself in his Commentaries (published 1571) as "un Apprentice de la Comen Ley," and in his Reports employs the term "Apprentice" to denote Counsel not of the Serjeant's degree. . . .*

* Serjeant Pulling in "The Order of the Coif," 113–114, says the inscription on the portrait [here reproduced] is correct, but that Plowden "rejoiced in his older designation of the *learned apprentice of the law*" as did others "after they were raised to the Coif." But in view of the great formality connected with the "return to the writ," if there is no record of the "return," as Williamson intimates, it seems likely that Mr. Williamson has caught the learned Serjeant "napping" on this point. The inscription on the portrait prefixed to an edition of the "Commentaries" in 1761, one hundred and seventy-seven years after Plowden's death, may well have been an error.

Pulling tells us that in the Fifteenth Century the position of "famous apprentice" was sometimes preferred to the degree of Serjeant, or even to a judgeship, the tenure of which was then merely *durante bene placento*. This tenure during the King's pleasure was that of our Massachusetts judges before the Revolution and was referred to as a grievance in the Declaration of Independence. Hence our present constitutional tenure "during good behavior."

Pulling also tells us that "the real coif — the chief insignment of habit" of "Serjeants-at-law . . . was of white lawn or silk, forming a close-fitting head covering." On top of the white Coif the old fashion was "for judges and serjeants to wear a small skull cap of black silk or velvet." At the beginning of the Eighteenth Century "when the fashion of powdered wigs in lieu of natural hair having reached Westminster Hall, it became necessary that the head-dress . . . should not altogether hide the honorable badge of the order . . . the peruquiers . . . contrived, the round patch of *black and white* as a diminutive representative of the *Coif and Cap*." This explains the head-dress in many early judicial portraits with which we are familiar.

Adventures of Alice.

From *Saturday Evening Post*, November 7, 1925.

"This," said the White Rabbit, "is a court of law where trials are held."

"Why do they call them trials?" Alice asked.

"You wouldn't ask that question," replied the White Rabbit, "if you'd ever been a litigant. Of all the trials with which mankind is afflicted, there's no trial like a trial. That's why they call them trials."

"I see," said Alice. "I heard my father say to a strange man the other day that he would try a couple of cases, and it puzzled me, for father is not a lawyer."

"Oh, those were probably criminal cases," said the White Rabbit. "They're the only kind worth trying now."

"Why is that man shouting so at the poor fellow in the chair?" Alice asked.

"He's a civil lawyer," explained the White Rabbit. "He's cross-examining a witness."

"I'd hate to meet an uncivil one," said Alice as the civil lawyer shook his fist in the face of the helpless witness.

"A civil lawyer is one who is not civil," the White Rabbit said, "and a criminal lawyer is one who is not a criminal. That's what is called practicing law."

"I practice the piano every day," said Alice.

"Well, practicing law is pretty much like practicing piano," said the White Rabbit. "It's grand for the practicer, but its tough on the neighbors."

"I should think that after a lawyer had practiced steadily for a couple of years he'd become proficient enough to give up practicing."

"No," said the White Rabbit, "that's the funny part of it. A lawyer never does anything but practice."

"Who are those funny-looking men sleeping over there in the box?" asked Alice.

"They're the jurors," said the White Rabbit. "You see, this is quite a sensational and important case, so they had to get a jury that is practically intelligent."

"But they all seem to be asleep," said Alice.

"That proves their intelligence," said the White Rabbit. "If they wanted twelve men who could keep awake during a long trial like this they'd have to get a jury suffering from insomnia. But these are special jurors. They were carefully selected from five hundred."

Alice looked admiringly at the specially selected jurors.

"What makes them so special?" she asked.

"Well," said the White Rabbit, "this case has been on the front pages of the newspapers for months and everybody has been discussing it; so they had to select a jury of twelve men who had never read about this case, never heard about it and had formed no opinion about it."

"That seems like a silly system," said Alice.

"It is," replied the White Rabbit.

In the meantime the lawyer was growing more violent and angry very minute.

"Where were you on the night of June fifth?" he kept shouting, shaking his fist angrily.

"I wonder why he wants to know where he was on the night of June fifth," said Alice.

"That's one of the first rules of law," said the White Rabbit. "I think it's in the Constitution or the Magna Charta or somewhere. A witness must always be asked where he was on the night of June fifth."

"Supposing he doesn't remember?" said Alice.

"He never does remember," said the White Rabbit. "It's against the rules to remember. You see, that gives the lawyer a chance to ask his second great question."

"What is that?"

" 'Is your memory as good today as it always was?'" quoted the White Rabbit. "Then there's the third great question: 'Is that as true as everything else you told us today?' With these three great questions anyone can be a lawyer."

"There's one other thing I want to know," Alice said. "Why is that lawyer always so angry and cross at the witness?"

"He's a cross-examiner," said the White Rabbit.

— *Newman Levy*